

By

M. Lerner

S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

providing standards for state administrative agency practice and procedures; providing for review of state agency proceedings; ^{privileges and immunities for witnesses} repealing Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, ^{insert} as amended, (Article 6252-13, Vernon's Texas Civil Statutes), and other laws in conflict; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: ^{providing an effective date}

Section 1. PURPOSE. It is declared the public policy of the state to afford minimum standards of uniform practice and procedure of state agencies, to provide for public participation in the rule-making process, to restate the law of judicial review of agency actions, and to require agencies to give notice and current information of their actions.

~~Section~~ 2. SHORT TITLE. This Act shall be known and may be cited as "The Administrative Procedure Act".

~~Section~~ 3. DEFINITIONS. As used in this Act:

^a
(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education) which makes rules or determines contested cases.

(2) "Contested Case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the grant, denial, removal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include ⁽¹⁾ statements concerning only the internal management of any agency and not affecting private rights or procedures, or ⁽²⁾ declaratory rulings on petitions pursuant to Section 9 hereof.

Sec. 4. PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY OF RULES AND ORDERS. (a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

(2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(3) index and make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been indexed and made available for public inspection as required by this Act. The indexing requirement applies to all materials listed in Section 4(a), (1) and (2), ^{Subdivisions (1) and (2), Subsection (a)} and to all materials in ^{Subdivision 3, Subsection (a), Section 4} Section 4(a)(3) which are issued after the effective date of this Act. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

Section 4 of this Act

Sec. 5. PROCEDURE FOR ADOPTION OF RULES. (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) give at least 30 days' notice of its intended action.

The notice shall include a statement of either the express terms or an informative summary of the proposed action, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be published not less than 30 nor more than 60 days prior to such intended action in a newspaper of general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest U. S. Census. In addition, the notice is to be mailed to all persons who have made timely written requests of the agency for advance notice of its rule-making proceedings; provided, however, that failure to mail such notice shall not invalidate any actions taken or rules adopted; and

(2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral argument must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(b) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under Subsection (a) (1) and ~~(a) (2)~~ of this section is not precluded.

Subdivision (2) of Subsection (a) (1)
Act

(c) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years from the effective date of the rule.

(d) An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule-making. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making. The powers of such committees shall be advisory only.

Sec. 6. FILING AND TAKING EFFECT OF RULES. (a) Each agency shall file in the office of the secretary of state a certified copy of each rule adopted by it, including all rules existing on the effective date of this Act. The secretary of state shall keep a permanent register properly indexed of the rules open to public inspection.

(b) Each rule hereafter adopted is effective 20 days after filing except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date;

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing with the secretary of state, or at a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

Sec. 7. AVAILABILITY OF RULES. (a) The secretary of state shall file and make available all effective rules adopted by each agency.

(b) Rules filed with the secretary of state shall be made available upon request to any person at prices fixed by the secretary of state to cover costs of mailing, publication, and copying.

X (c) The secretary of state may prescribe such reasonable rules and regulations ^{as are} necessary to enable him to administer this Act effectively. Such rules may include, but shall not be limited to, paper size and format of rules required to be filed by this Act.

Sec. 8. PETITION FOR ADOPTION OF RULES. Any interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with [✓] Section 5 of this Act.

Sec. 9. DECLARATORY RULINGS BY AGENCIES. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

Sec. 10. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES. The validity or applicability of any rule, including emergency rules adopted under ^{subsection (b)} Section 5 ~~of~~ of this Act, may be determined in an action for declaratory judgment in the District Court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

Sec. 11. CONTESTED CASES; NOTICES; HEARINGS; RECORDS.

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) The notice shall include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) The record in a contested case shall include:

(1) all pleadings, motions, intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(f) Proceedings, or any part thereof, shall be transcribed upon written request of any party.

(g) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Sec. 12. RULES OF EVIDENCE, OFFICIAL NOTICE. ^(a) ~~(1)~~ In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

^(b) ~~(2)~~ In connection with any contested case held under the provisions of this Act, an agency:

⁽¹⁾ (a) Shall have the power to swear witnesses and take their testimony under oath.

⁽²⁾ (b) Upon the written request of any party to a contested case pending before it or upon its own motion, shall upon good cause shown and on deposit of such sums as will reasonably insure payment of the amounts estimated to accrue under the following ^{Subdivisions (1) and (2)} ~~Paragraphs 3(a) and (b)~~ ^{Subsection (c) of} of this section, issue a subpoena addressed to the sheriff or any constable to require the attendance of such witnesses and the production of such books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

⁽³⁾ (c) Upon the written request of any party to a contested case pending before it or upon its own motion, shall upon good cause shown and on deposit of such sum as will reasonably insure payment of the amounts estimated to accrue under ^{Subdivisions (1) and (2)} ~~Paragraphs 3(a) and (b)~~ ^{Subsection (c)} of this Section ~~12~~, issue a commission, addressed to the several officers authorized by statute to take depositions, to

require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that such witness appear and produce, at the time his deposition is taken, such books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding.

⁴
(d) The place of taking such depositions shall be in the county of the witness's residence, or where he is employed or regularly transacts business in person. Such commission shall authorize and require the officer or officers to whom the same is addressed, or either of them, to examine said witness before him on the date and at the place named in the commission and to take his answers under oath to such questions as may be propounded to him by the parties to the proceeding, the agency, or the attorneys for such parties or the agency. Such commission shall require such witness to remain in attendance from day to day until such deposition is begun and completed.

⁵
(e) The witness shall be carefully examined, his testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

⁶
(f) The officer taking such oral deposition shall not sustain objections to any of the testimony taken, nor exclude same; but any of the parties or attorneys engaged in taking testimony shall have such rulings reserved for the action of the agency before which the matter is pending, but the administrator or other officer conducting the hearing shall not be confined to objections made at the taking of the testimony.

¹
(g) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties in writing; provided that when the witness is a party to the contested case pending before the agency with an attorney of record the deposition officer shall notify such attorney of record in writing by registered mail or certified mail that the deposition is ready for such examination and reading at the office of such deposition officer, and if the witness does not appear and examine, read and sign his deposition within 20 days after the mailing of such notice, the deposition shall be returned as provided herein for unsigned depositions. In any event the witness shall sign the deposition at least three days prior to the hearing or it shall be returned as provided herein for unsigned depositions. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties present at the taking of the deposition by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed.

⁸
(h) Depositions may be returned to the agency before which the contested case is pending either by mail, or by a party interested in taking the same, or by any other person. If returned by mail, the agency shall endorse on the deposition that it was received from the post office and shall cause the agency employee so receiving

the deposition to sign his name thereto. If not sent by mail, the person delivering them to the agency shall make affidavit before the agency that he received them from the hands of the officer before whom they were taken, that they have not been out of his possession since, and that they have undergone no alteration.

⁹
(1) Depositions, after being filed with the agency, may be opened by any employee of the agency at the request of either party or his counsel; and such employee shall endorse on such depositions on what day and at whose request they were opened, signing his name thereto, and they shall remain on file with the agency for the inspection of any party.

¹⁰
(7) Regardless of whether cross interrogatories have been propounded, any party has a right to use the depositions in the contested case pending before the agency..

¹¹
(a) ~~(b)~~ A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding, to give his deposition, or to produce such books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

¹
(a) mileage of 10 cents a mile, or such greater amount as an agency may prescribe by rule, for going to, and returning from the place of the hearing or the place where his deposition is taken, if such place is more than 25 miles from his place of residence; and

²
(b) a fee of \$10 a day, or such greater amount as an agency may prescribe by rule, for each day or part thereof he is necessarily present as a witness or deponent.

³
(d) ~~(c)~~ Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request

the witness appears or the deposition is taken, upon presentation of proper vouchers sworn by the witness and approved by the agency.

(c) ~~(5)~~ In the case of the failure of any person to comply with any subpoena or commission issued under the authority of this Act, the agency issuing the same by and through the Attorney General of Texas, or the party requesting same may bring suit to enforce the subpoena or commission in the District Court of Travis County, Texas. The court, if it determines that good cause exists for the issuance of such subpoena or commission shall thereupon order compliance with the requirements of such subpoena or commission, and failure to obey the order of such court may be punished by the court as contempt thereof.

(d) ~~(6)~~ In contested cases, documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(e) ~~(7)~~ In contested cases, a party shall be permitted to conduct cross-examinations required for a full and true disclosure of the facts.

(f) ~~(8)~~ In connection with any hearing held under the provisions of this Act, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(8) In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Sec. 13. EXAMINATION OF EVIDENCE BY AGENCY. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.

Sec. 14. DECISIONS AND ORDERS. (c) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. (1) A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(2) Such orders shall be final in the absence of a timely motion for rehearing upon the expiration of the period for filing

such a motion or be final and appealable from and after the date of rendition of the order overruling the motion for rehearing, or from the date such motion is overruled by operation of law. If an agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite such finding in such decision or order as well as the fact that such decision or order is final and effective from the date rendered, in which event such decision or order shall be final and appealable from the date rendered and no motion for rehearing shall be required as a prerequisite for appeal.

(3) Such final decisions or orders shall be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the officials of the agency, the agency may prescribe a longer period of time in which the final order or decision of the agency shall be issued. Provided that such extension, if so prescribed, shall be announced at the conclusion of the hearing.

Subsection (b) of this section

(4) Except as provided in (2) above, a motion for rehearing shall be a prerequisite to an appeal. Motions for rehearing shall be filed within 15 days after the date of rendition of a final decision or order; replies to such motion for rehearing shall be filed with the agency within 25 days after the date of rendition of the final decision or order; and agency action on such motion shall be taken within 45 days after the date of rendition of such final decision or order. If agency action is not taken within such 45 day period, the motion for rehearing shall be overruled by operation of law 45 days after the date of rendition of such final decision or order. The agency may by written order extend the period of time for filing such motions and replies and agency action provided that

such extension shall not extend the period for agency action beyond 90 days after the date of rendition of such final decision or order. In the event of such extension, the motion for rehearing shall be overruled by operation of law upon the date fixed by such order, or in the absence thereof, 90 days from the date of such final decision or order.

(2)
(8) The parties may by agreement with the approval of the agency provide for a modification of the times hereinabove provided.

Sec. 15. EX PARTE CONSULTATIONS. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except upon notice and opportunity for all parties to participate.

✓ Sec. 16, [#]LICENSES. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases as defined in Section 3 ^{Subsection (b)} ~~(2)~~ apply. *of this Act*

(b) When a licensee has made timely and sufficient application for the renewal of license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by registered or certified

mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

Sec. 17. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case as defined in Section 3(2) ^{Subsection (b), of this Act} is entitled to judicial review under this Act. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision or order complained of is final and appealable, in ^a the District Court of Travis County, and not elsewhere, except in cases where venue is otherwise provided by statute. The petition for review shall be served on the agency and upon all parties of record in any hearing before the agency in respect to the matter for which review is sought.

(c) After service of the petition on the agency, and within the time permitted for filing an answer, (or such additional time as may be allowed by the court) the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence

is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court.

(e) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

(f) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact committed to agency discretion. The court may affirm the decision of the agency in whole or in part; the court shall reverse or remand the case for further proceeding if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

X (g) Nothing herein contained in ^{This} Section 17 ^{of this Act} shall affect the right of trial de novo of rate cases appealed from the Railroad Commission of Texas.

Soc. 18. APPEALS. Appeals from any final judgment of the district court may be taken by any party in the manner provided

for in civil actions generally, but no appeal bond shall be required of the agency.

Sec. 19. SEVERABILITY. If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the legislature hereby declares that it would have passed such remaining portion despite such invalidity.

Sec. 20. REPEAL OF CONFLICTING LAWS. ✓ Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, ✓ as amended (Article 6252-13, Vernon's Texas Civil Statutes), and all other laws and parts of laws in conflict with this Act are repealed. Nothing herein shall be deemed to repeal any existing statutory provisions conferring investigatory authority upon any agency, including any provision thereof which grants such agency the power (in connection with such investigatory authority) to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings, or issue subpoenas or summons.

Sec. 21. EFFECTIVE DATE. This Act shall take effect on January 1, 1976.

Sec. 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act shall take effect and be in force from and after January 1, 1976, and it is so enacted.

COMMITTEE/FLOOR REPORT FORM

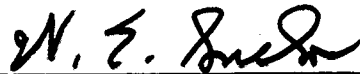
Austin, Texas

January 30, 1975

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on Intergovernmental Relations to which was referred
S. B. No. 41 have had the same under consideration, and I am instructed to report it back to the Senate
with the recommendation that it do pass and be printed.



Chairman

W. E. Snelson

IF THIS FORM IS TO BE USED AS A FLOOR REPORT, IT IS NECESSARY FOR A MAJORITY OF THE COMMITTEE MEMBERS TO SIGN IT. Paper clip the original and one copy of this form to the original bill and retain one copy for your file.

INTERGOVERNMENTAL RELATIONS
January 30. 1975

SB 41

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CHAIRMAN : Ah, what action would the committee then like to take as regards Senate Bill number 41? Senator Ogg?

SEN. OGG : Move that we report Senate Bill 41 back to the Senate with the motion that it do pass and be printed.

CHAIRMAN : Senator Ogg moves that Senate Bill number 41 be reported back to the Senate with the recommendation that it do pass and be printed. Clerk will call the roll.

CLERK : Harrington -- aye
Andujar -- aye
Clower, ah
Kothmann -- aye
Lombardino -- aye
McKinnon -- aye
Ogg -- aye
Williams -- aye
Snelson -- aye

CHAIRMAN : There being eight ayes and no nays, Senate Bill number 41 is reported back to the Senate with the recommendation it do pass and be printed.

.....End of committee discussion of Senate Bill 41.

Sherman

AMENDMENT NO. 1

Amend S.B. 41, by adding ^{a new} section 19 and renumbering Sections 19-22 as Sections 20-23, such new Section 19 to read as follows:

19. EXCEPTIONS. The provisions of this Act shall not apply to the financial and medical assistance and service programs of the State Department of Public Welfare.

The amendment was read.

ADOPTED

FEB 5 1975

Charles Schwab
Secretary of the Senate



Amend caption to conform to body
of bill.

ADOPTED

FEB 5 1975

Charles Schwab

Secretary of the Senate

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1976 Engrossed

Engrossing Clerk

By: Sherman

S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

1 providing standards for state administrative agency practice and
2 procedures; providing mileage and fees for witnesses; providing
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6 of Public Welfare; repealing Chapter 274, Acts of the 57th
7 Legislature, Regular Session, 1961, as amended (Article 6252-13,
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9 providing an effective date; and declaring an emergency.
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(e) "Party" means each person or agency named or admitted as a party.

(f) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(g) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include (1) statements concerning only the internal management of any agency and not affecting private rights or procedures, or (2) declaratory rulings on petitions pursuant to Section 9 hereof.

Sec. 4. PUBLIC INFORMATION: ADOPTION OF RULES:
AVAILABILITY OF RULES AND ORDERS. (a) In addition to other rule-making requirements imposed by law, each agency shall:

1 (1) adopt rules of practice setting forth the nature
2 and requirements of all formal and informal procedures available;

3 (2) index and make available for public inspection
4 all rules and all other written statements of policy or
5 interpretations formulated, adopted, or used by the agency in the
6 discharge of its functions; and

7 (3) index and make available for public inspection
8 all final orders, decisions, and opinions.

9 (b) No agency rule, order, or decision is valid or effective
10 against any person or party, nor may it be invoked by the agency
11 for any purpose, until it has been indexed and made available for
12 public inspection as required by this Act. The indexing
13 requirement applies to all materials listed in Subdivisions (1)
14 and (2), Subsection (a), Section 4 of this Act and to all materials
15 in Subdivision (3), Subsection (a), Section 4 of this Act which
16 are issued after the effective date of this Act. This provision
17 is not applicable in favor of any person or party who has actual
18 knowledge of the rule, order, or decision.

19 Sec. 5. PROCEDURE FOR ADOPTION OF RULES. (a) Prior to
20 the adoption, amendment, or repeal of any rule, the agency shall:

21 (1) give at least 30 days' notice of its intended
22 action. The notice shall include a statement of either the express
23 terms or an informative summary of the proposed action, and the
24 time when, the place where, and the manner in which interested
25 persons may present their views thereon. The notice shall be
26 published not less than 30 nor more than 60 days prior to such

1 intended action in a newspaper of general circulation in Travis
2 County and in each of the five most populous counties in Texas,
3 according to the latest United States census. In addition, the
4 notice is to be mailed to all persons who have made timely written
5 requests of the agency for advance notice of its rule-making
6 proceedings; provided, however, that failure to mail such notice
7 shall not invalidate any actions taken or rules adopted; and

8 (2) afford all interested persons reasonable
9 opportunity to submit data, views, or arguments, orally or in
10 writing. In case of substantive rules, opportunity for oral
11 argument must be granted if requested by 25 persons, by a
12 governmental subdivision or agency, or by an association having
13 not less than 25 members. The agency shall consider fully all
14 written and oral submissions respecting the proposed rule. Upon
15 adoption of a rule, the agency, if requested to do so by an
16 interested person either prior to adoption or within 30 days
17 thereafter, shall issue a concise statement of the principal
18 reasons for and against its adoption, incorporating therein its
19 reasons for overruling the considerations urged against its
20 adoption.

21 (b) If an agency finds that an imminent peril to the public
22 health, safety, or welfare requires adoption of a rule upon fewer
23 than 30 days' notice and states in writing its reasons for that
24 finding, it may proceed, without prior notice or hearing or upon
25 any abbreviated notice and hearing that it finds practicable, to
26 adopt an emergency rule. The rule may be effective for a period

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1 of not longer than 120 days renewable once for a period not
2 exceeding 60 days, but the adoption of an identical rule under
3 Subdivisions (1) and (2) of Subsection (a) of this section is not
4 precluded.

5 (c) No rule hereafter adopted is valid unless adopted in
6 substantial compliance with this section. A proceeding to contest
7 any rule on the ground of noncompliance with the procedural
8 requirements of this section must be commenced within two years
9 from the effective date of the rule.

10 (d) An agency may use informal conferences and consultations
11 as means of obtaining the viewpoints and advice of interested
12 persons with respect to contemplated rule making. Each agency
13 also is authorized to appoint committees of experts or interested
14 persons or representatives of the general public to advise it
15 with respect to any contemplated rule making. The powers of such
16 committees shall be advisory only.

17 Sec. 6. FILING AND TAKING EFFECT OF RULES. (a) Each
18 agency shall file in the office of the secretary of state a
19 certified copy of each rule adopted by it, including all rules
20 existing on the effective date of this Act. The secretary of
21 state shall keep a properly indexed permanent register of the
22 rules open to public inspection.

23 (b) Each rule hereafter adopted is effective 20 days after
24 filing except that:

25 (1) if a later date is required by statute or
26 specified in the rule, the later date is the effective date;

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1 (2) subject to applicable constitutional or statutory
2 provisions, an emergency rule becomes effective immediately upon
3 filing with the secretary of state, or at a stated date less than
4 20 days thereafter, if the agency finds that this effective date
5 is necessary because of imminent peril to the public health,
6 safety, or welfare. The agency's finding and a brief statement
7 of the reasons therefor shall be filed with the rule. The agency
8 shall take appropriate measures to make emergency rules known to
9 the persons who may be affected by them.

10 Sec. 7. AVAILABILITY OF RULES. (a) The secretary of state
11 shall file and make available all effective rules adopted by each
12 agency.

13 (b) Rules filed with the secretary of state shall be made
14 available upon request to any person at prices fixed by the
15 secretary of state to cover costs of mailing, publication, and
16 copying.

17 (c) The secretary of state may prescribe such reasonable
18 rules and regulations as are necessary to enable him to administer
19 this Act effectively. Such rules may include, but shall not be
20 limited to, paper size and format of rules required to be filed
21 by this Act.

22 Sec. 8. PETITION FOR ADOPTION OF RULES. Any interested
23 person may petition an agency requesting the promulgation,
24 amendment, or repeal of a rule. Each agency shall prescribe by
25 rule the form for petitions and the procedure for their submission,
26 consideration, and disposition. Within 60 days after submission

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1 of a petition, the agency either shall deny the petition in
2 writing, stating its reasons for the denial, or shall initiate
3 rule-making proceedings in accordance with Section 5 of this Act.

4 Sec. 9. DECLARATORY RULINGS BY AGENCIES. Each agency shall
5 provide by rule for the filing and prompt disposition of petitions
6 for declaratory rulings as to the applicability of any statutory
7 provision or of any rule or order of the agency. Rulings disposing
8 of petitions have the same status as agency decisions or orders
9 in contested cases.

10 Sec. 10. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY
11 OF RULES. The validity or applicability of any rule, including
12 emergency rules adopted under Subsection (b) of Section 5 of this
13 Act, may be determined in an action for declaratory judgment in
14 a district court of Travis County, and not elsewhere, if it is
15 alleged that the rule, or its threatened application, interferes
16 with or impairs or threatens to interfere with or impair the legal
17 rights or privileges of the plaintiff. The agency shall be made
18 a party to the action. A declaratory judgment may be rendered
19 whether or not the plaintiff has requested the agency to pass
20 upon the validity or applicability of the rule in question.

21 Sec. 11. CONTESTED CASES; NOTICES; HEARINGS; RECORDS. (a)
22 In a contested case, all parties shall be afforded an opportunity
23 for hearing after reasonable notice of not less than 10 days.

24 (b) The notice shall include:

25 (1) a statement of the time, place, and nature of
26 the hearing;

1 (2) a statement of the legal authority and
2 jurisdiction under which the hearing is to be held;

3 (3) a reference to the particular sections of the
4 statutes and rules involved;

5 (4) a short and plain statement of the matters
6 asserted. If the agency or other party is unable to state the
7 matters in detail at the time the notice is served, the initial
8 notice may be limited to a statement of the issues involved.
9 Thereafter, upon timely written application, a more definite and
10 detailed statement shall be furnished not less than three days
11 prior to the date set for the hearing.

12 (c) Opportunity shall be afforded all parties to respond
13 and present evidence and argument on all issues involved.

14 (d) Unless precluded by law, informal disposition may be
15 made of any contested case by stipulation, agreed settlement,
16 consent order, or default.

17 (e) The record in a contested case shall include:

- 18 (1) all pleadings, motions, and intermediate rulings;
- 19 (2) evidence received or considered;
- 20 (3) a statement of matters officially noticed;
- 21 (4) questions and offers of proof, objections, and
22 rulings thereon;
- 23 (5) proposed findings and exceptions;
- 24 (6) any decision, opinion, or report by the officer
25 presiding at the hearing; and
- 26 (7) all staff memoranda or data submitted to the

1 hearing officer or members of the agency in connection with their
2 consideration of the case.

3 (f) Proceedings, or any part thereof, shall be transcribed
4 upon written request of any party.

5 (g) Findings of fact shall be based exclusively on the
6 evidence and on matters officially noticed.

7 Sec. 12. RULES OF EVIDENCE, OFFICIAL NOTICE. (a) In
8 contested cases, irrelevant, immaterial, or unduly repetitious
9 evidence shall be excluded. The rules of evidence as applied in
10 nonjury civil cases in the district courts of this state shall
11 be followed. When necessary to ascertain facts not reasonably
12 susceptible of proof under those rules, evidence not admissible
13 thereunder may be admitted (except where precluded by statute)
14 if it is of a type commonly relied upon by reasonably prudent men
15 in the conduct of their affairs. Agencies shall give effect to
16 the rules of privilege recognized by law. Objections to
17 evidentiary offers may be made and shall be noted in the record.
18 Subject to these requirements, when a hearing will be expedited
19 and the interests of the parties will not be prejudiced
20 substantially, any part of the evidence may be received in written
21 form.

22 (b) In connection with any contested case held under the
23 provisions of this Act, an agency:

24 (1) shall have the power to swear witnesses and take
25 their testimony under oath;

26 (2) upon the written request of any party to a

1 contested case pending before it or upon its own motion, shall
 2 upon good cause shown and on deposit of such sums as will
 3 reasonably insure payment of the amounts estimated to accrue under
 4 the following Subdivisions (1) and (2) of Subsection (c) of this
 5 section, issue a subpoena addressed to the sheriff or any constable
 6 to require the attendance of such witnesses and the production
 7 of such books, records, papers, or other objects as may be
 8 necessary and proper for the purposes of the proceedings;

9 (3) upon the written request of any party to a
 10 contested case pending before it or upon its own motion, shall
 11 upon good cause shown and on deposit of such sum as will reasonably
 12 insure payment of the amounts estimated to accrue under
 13 Subdivisions (1) and (2) of Subsection (c) of this section, issue
 14 a commission, addressed to the several officers authorized by
 15 statute to take depositions, to require that the deposition of
 16 a witness be taken, which commission shall authorize the issuance
 17 of any subpoenas necessary to require that such witness appear
 18 and produce, at the time his deposition is taken, such books,
 19 records, papers, or other objects as may be necessary and proper
 20 for the purposes of the proceeding.

21 (A) The place of taking such depositions shall
 22 be in the county of the witness's residence, or where he is
 23 employed or regularly transacts business in person. Such
 24 commission shall authorize and require the officer or officers
 25 to whom the same is addressed, or either of them, to examine said
 26 witness before him on the date and at the place named in the

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1 commission and to take his answers under oath to such questions
2 as may be propounded to him by the parties to the proceeding, the
3 agency, or the attorneys for such parties or the agency. Such
4 commission shall require such witness to remain in attendance
5 from day to day until such deposition is begun and completed.

6 (B) The witness shall be carefully examined,
7 his testimony shall be reduced to writing or typewriting by the
8 officer taking the deposition, or by some person under his personal
9 supervision, or by the deponent himself in the officer's presence,
10 and by no other person, and shall, after it has been reduced to
11 writing or typewriting, be subscribed by the deponent.

12 (C) The officer taking such oral deposition
13 shall not sustain objections to any of the testimony taken, nor
14 exclude same; but any of the parties or attorneys engaged in
15 taking testimony shall have such rulings reserved for the action
16 of the agency before which the matter is pending, but the
17 administrator or other officer conducting the hearing shall not
18 be confined to objections made at the taking of the testimony.

19 (D) When the testimony is fully transcribed,
20 the deposition shall be submitted to the witness for examination
21 and shall be read to or by him, unless such examination and reading
22 are waived by the witness and by the parties in writing; provided
23 that when the witness is a party to the contested case pending
24 before the agency with an attorney of record the deposition officer
25 shall notify such attorney of record in writing by registered
26 mail or certified mail that the deposition is ready for such

1 examination and reading at the office of such deposition officer,
2 and if the witness does not appear and examine, read and sign his
3 deposition within 20 days after the mailing of such notice, the
4 deposition shall be returned as provided herein for unsigned
5 depositions. In any event the witness shall sign the deposition
6 at least three days prior to the hearing or it shall be returned
7 as provided herein for unsigned depositions. Any changes in form
8 or substance which the witness desires to make shall be entered
9 upon the deposition by the officer with a statement of the reasons
10 given by the witness for making them. The deposition shall then
11 be signed by the witness, unless the parties present at the taking
12 of the deposition by stipulation waive the signing or the witness
13 is ill or cannot be found or refuses to sign. If the deposition
14 is not signed by the witness, the officer shall sign it and state
15 on the record the fact of the waiver or of the illness or absence
16 of the witness or the fact of the refusal to sign together with
17 the reason, if any, given therefor; and the deposition may then
18 be used as fully as though signed.

19 (E) Depositions may be returned to the agency
20 before which the contested case is pending either by mail, or by
21 a party interested in taking the same, or by any other person.
22 If returned by mail, the agency shall endorse on the deposition
23 that it was received from the post office and shall cause the
24 agency employee so receiving the deposition to sign his name
25 thereto. If not sent by mail, the person delivering them to the
26 agency shall make affidavit before the agency that he received

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1 them from the hands of the officer before whom they were taken,
2 that they have not been out of his possession since, and that
3 they have undergone no alteration.

4 (F) Depositions, after being filed with the
5 agency, may be opened by any employee of the agency at the request
6 of either party or his counsel; and such employee shall endorse
7 on such depositions on what day and at whose request they were
8 opened, signing his name thereto, and they shall remain on file
9 with the agency for the inspection of any party.

10 (G) Regardless of whether cross interrogatories
11 have been propounded, any party has a right to use the depositions
12 in the contested case pending before the agency.

13 (c) A witness or deponent who is not a party and who is
14 subpoenaed or otherwise compelled to attend any hearing or
15 proceeding, to give his deposition, or to produce such books,
16 records, papers, or other objects as may be necessary and proper
17 for the purposes of the proceeding under the authority of this
18 section is entitled to receive:

19 (1) mileage of 10 cents a mile, or such greater
20 amount as an agency may prescribe by rule, for going to, and
21 returning from the place of the hearing or the place where his
22 deposition is taken, if such place is more than 25 miles from his
23 place of residence; and

24 (2) a fee of \$10 a day, or such greater amount as
25 an agency may prescribe by rule, for each day or part thereof he
26 is necessarily present as a witness or deponent.

1 (d) Mileage and fees to which a witness is entitled under
2 this section shall be paid by the party or agency at whose request
3 the witness appears or the deposition is taken, upon presentation
4 of proper vouchers sworn by the witness and approved by the agency.

5 (e) In the case of the failure of any person to comply
6 with any subpoena or commission issued under the authority of
7 this Act, the agency issuing the same by and through the Attorney
8 General of Texas, or the party requesting same may bring suit to
9 enforce the subpoena or commission in a district court of Travis
10 County, Texas. The court, if it determines that good cause exists
11 for the issuance of such subpoena or commission, shall thereupon
12 order compliance with the requirements of such subpoena or
13 commission, and failure to obey the order of such court may be
14 punished by the court as contempt thereof.

15 (f) In contested cases, documentary evidence may be received
16 in the form of copies or excerpts, if the original is not readily
17 available. On request, parties shall be given an opportunity to
18 compare the copy with the original.

19 (g) In contested cases, a party shall be permitted to
20 conduct cross-examinations required for a full and true disclosure
21 of the facts.

22 (h) In connection with any hearing held under the provisions
23 of this Act, notice may be taken of judicially cognizable facts.
24 In addition, notice may be taken of generally recognized facts
25 within the area of the agency's specialized knowledge. Parties
26 shall be notified either before or during the hearing, or by

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1 reference in preliminary reports or otherwise, of the material
2 noticed, including any staff memoranda or data, and they shall
3 be afforded an opportunity to contest the material so noticed.
4 The special skills or knowledge of the agency and its staff may
5 be utilized in evaluating the evidence.

6 (1) In contested cases, all parties are entitled to the
7 assistance of their counsel before administrative agencies. This
8 right may be expressly waived.

9 Sec. 13. EXAMINATION OF EVIDENCE BY AGENCY. When in a
10 contested case a majority of the officials of the agency who are
11 to render the final decision has not heard the case or read the
12 record, the decision, if adverse to a party to the proceeding
13 other than the agency itself, shall not be made until a proposal
14 for decision is served upon the parties, and an opportunity is
15 afforded to each party adversely affected to file exceptions and
16 present briefs and oral argument to the officials who are to
17 render the decision. The proposal for decision shall contain a
18 statement of the reasons therefor and of each issue of fact or
19 law necessary to the proposed decision, prepared by the person
20 who conducted the hearing or by one who has read the record. The
21 parties by written stipulation may waive compliance with this
22 section.

23 Sec. 14. DECISIONS AND ORDERS. (a) A final decision or
24 order adverse to a party in a contested case shall be in writing
25 or stated in the record. A final decision shall include findings
26 of fact and conclusions of law, separately stated. Findings of

1 fact, if set forth in statutory language, shall be accompanied
2 by a concise and explicit statement of the underlying facts
3 supporting the findings. If, in accordance with agency rules, a
4 party submitted proposed findings of fact, the decision shall
5 include a ruling upon each proposed finding. Parties shall be
6 notified either personally or by mail of any decision or order.
7 On written request, a copy of the decision or order shall be
8 delivered or mailed to any party and to his attorney of record.

9 (b) Such orders shall be final in the absence of a timely
10 motion for rehearing upon the expiration of the period for filing
11 such a motion or be final and appealable from and after the date
12 of rendition of the order overruling the motion for rehearing,
13 or from the date such motion is overruled by operation of law.
14 If an agency finds that an imminent peril to the public health,
15 safety, or welfare requires immediate effect of a final decision
16 or order in a contested case, it shall recite such finding in
17 such decision or order as well as the fact that such decision or
18 order is final and effective from the date rendered, in which
19 event such decision or order shall be final and appealable from
20 the date rendered and no motion for rehearing shall be required
21 as a prerequisite for appeal.

22 (c) Such final decisions or orders shall be rendered within
23 60 days after the date the hearing is finally closed. In a
24 contested case heard by other than a majority of the officials
25 of the agency, the agency may prescribe a longer period of time
26 in which the final order or decision of the agency shall be issued;

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1 provided that such extension, if so prescribed, shall be announced
2 at the conclusion of the hearing.

3 (d) Except as provided in (b) of this section, a motion
4 for rehearing shall be a prerequisite to an appeal. Motions for
5 rehearing shall be filed within 15 days after the date of rendition
6 of a final decision or order; replies to such motion for rehearing
7 shall be filed with the agency within 25 days after the date of
8 rendition of the final decision or order; and agency action on
9 such motion shall be taken within 45 days after the date of
10 rendition of such final decision or order. If agency action is
11 not taken within such 45 day period, the motion for rehearing
12 shall be overruled by operation of law 45 days after the date of
13 rendition of such final decision or order. The agency may by
14 written order extend the period of time for filing such motions
15 and replies and agency action provided that such extension shall
16 not extend the period for agency action beyond 90 days after the
17 date of rendition of such final decision or order. In the event
18 of such extension, the motion for rehearing shall be overruled
19 by operation of law upon the date fixed by such order, or in the
20 absence thereof, 90 days from the date of such final decision or
21 order.

22 (e) The parties may by agreement with the approval of the
23 agency provide for a modification of the times herein above
24 provided.

25 Sec. 15. EX PARTE CONSULTATIONS. Unless required for the
26 disposition of ex parte matters authorized by law, members or

1 employees of an agency assigned to render a decision or to make
2 findings of fact and conclusions of law in a contested case shall
3 not communicate, directly or indirectly, in connection with any
4 issue of fact or law with any party or his representative, except
5 upon notice and opportunity for all parties to participate.

6 Sec. 16. LICENSES. (a) When the grant, denial, or renewal
7 of a license is required to be preceded by notice and opportunity
8 for hearing, the provisions of this Act concerning contested cases
9 as defined in Subsection (b) of Section 3 of this Act apply.

10 (b) When a licensee has made timely and sufficient
11 application for the renewal of license or a new license with
12 reference to any activity of a continuing nature, the existing
13 license does not expire until the application has been finally
14 determined by the agency, and in case the application is denied
15 or the terms of the new license limited, until the last day for
16 seeking review of the agency order or a later date fixed by order
17 of the reviewing court.

18 (c) No revocation, suspension, annulment, or withdrawal
19 of any license is lawful unless, prior to the institution of
20 agency proceedings, the agency gave notice by registered or
21 certified mail to the licensee of facts or conduct alleged to
22 warrant the intended action, and the licensee was given an
23 opportunity to show compliance with all lawful requirements for
24 the retention of the license.

25 Sec. 17. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person
26 who has exhausted all administrative remedies available within

1 the agency and who is aggrieved by a final decision in a contested
2 case as defined in Subsection (b) of Section 3 of this Act is
3 entitled to judicial review under this Act. A preliminary,
4 procedural, or intermediate agency action or ruling is immediately
5 reviewable if review of the final agency decision would not provide
6 an adequate remedy.

7 (b) Proceedings for review are instituted by filing a
8 petition within 30 days after the decision or order complained
9 of is final and appealable, in a district court of Travis County,
10 and not elsewhere, except in cases where venue is otherwise
11 provided by statute. The petition for review shall be served on
12 the agency and upon all parties of record in any hearing before
13 the agency in respect to the matter for which review is sought.

14 (c) After service of the petition on the agency, and within
15 the time permitted for filing an answer, or such additional time
16 as may be allowed by the court, the agency shall transmit to the
17 reviewing court the original or a certified copy of the entire
18 record of the proceeding under review. By stipulation of all
19 parties to the review proceedings, the record may be shortened.
20 A party unreasonably refusing to stipulate to limit the record
21 may be taxed by the court for the additional costs. The court may
22 require or permit subsequent corrections or additions to the
23 record.

24 (d) If, before the date set for hearing, application is
25 made to the court for leave to present additional evidence, and
26 it is shown to the satisfaction of the court that the additional

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1 evidence is material and that there were good reasons for failure
2 to present it in the proceeding before the agency, the court may
3 order that the additional evidence be taken before the agency
4 upon conditions determined by the court. The agency may modify
5 its findings and decision by reason of the additional evidence
6 and shall file such evidence and any modifications, new findings,
7 or decisions with the reviewing court.

8 (e) The review shall be conducted by the court without a
9 jury and shall be confined to the record. In cases of alleged
10 irregularities in procedure before the agency, not shown in the
11 record, proof thereon may be taken in the court.

12 (f) The court shall not substitute its judgment for that
13 of the agency as to the weight of the evidence on questions of
14 fact committed to agency discretion. The court may affirm the
15 decision of the agency in whole or in part; the court shall reverse
16 or remand the case for further proceeding if substantial rights
17 of the appellant have been prejudiced because the administrative
18 findings, inferences, conclusions, or decisions are:

19 (1) in violation of constitutional or statutory
20 provisions;

21 (2) in excess of the statutory authority of the
22 agency;

23 (3) made upon unlawful procedure;

24 (4) affected by other error of law;

25 (5) not reasonably supported by substantial evidence
26 in view of the reliable and probative evidence in the record as

1 a whole; or

2 (6) arbitrary or capricious or characterized by abuse
3 of discretion or clearly unwarranted exercise of discretion.

4 (g) Nothing herein contained in this Section 17 shall
5 affect the right of trial de novo of rate cases appealed from the
6 Railroad Commission of Texas.

7 Sec. 18. APPEALS. Appeals from any final judgment of the
8 district court may be taken by any party in the manner provided
9 for in civil actions generally, but no appeal bond shall be
10 required of the agency.

11 Sec. 19. EXCEPTIONS. The provisions of this Act shall not
12 apply to the financial and medical assistance and service programs
13 of the State Department of Public Welfare.

14 Sec. 20. SEVERABILITY. If any part, section, subsection,
15 paragraph, sentence, clause, phrase, or word contained in this
16 Act shall be held by the courts to be invalid or unconstitutional,
17 such holding shall not affect the validity of the remaining
18 portions of this Act, and the legislature hereby declares that
19 it would have passed such remaining portion despite such
20 invalidity.

21 Sec. 21. REPEAL OF CONFLICTING LAWS. Chapter 274, Acts
22 of the 57th Legislature, Regular Session, 1961, as amended (Article
23 6252-13, Vernon's Texas Civil Statutes), and all other laws and
24 parts of laws in conflict with this Act are repealed. Nothing
25 herein shall be deemed to repeal any existing statutory provisions
26 conferring investigatory authority upon any agency, including any

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1 provision thereof which grants such agency the power, in connection
2 with such investigatory authority, to take depositions, administer
3 oaths or affirmations, examine witnesses, receive evidence, conduct
4 hearings, or issue subpoenas or summons.

5 Sec. 22. EFFECTIVE DATE. This Act shall take effect on
6 January 1, 1976.

7 Sec. 23. EMERGENCY. The importance of this legislation
8 and the crowded condition of the calendars in both houses create
9 an emergency and an imperative public necessity that the
10 constitutional rule requiring bills to be read on three several
11 days in each house be suspended, and this rule is hereby suspended,
12 and that this Act shall take effect and be in force from and after
13 January 1, 1976, and it is so enacted.

COMMITTEE REPORT

THE HONORABLE BILL CLAYTON
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Date 3/19/75

SIR:

We, your COMMITTEE ON Judicial Affairs to whom was referred S.B. 41
(measure)

have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
(~~do~~) do pass, with amendment(s).
(X) do pass and be not printed; a committee substitute is recommended in lieu of the original measure.

~~The Committee recommends that this measure be placed on the (Local / Consent / Calendar.~~

This measure (✓) proposes new law. and amends existing law
~~(and amends existing law.)~~

House Sponsor of Senate Measure: Van Dohlen

The measure was reported from Committee by the following Record Vote:

7 ayes
1 nays
1 present, not voting
2 absent

Tim Van Dohlen
Chairman

Return with Original Measure

S.B. No. 41, as amended
By: Sherman

Committee: Judicial Affairs

BILL ANALYSIS

Background Information:

Texas has no comprehensive, unified body of administrative law. Each agency is left largely to itself to develop what it deems proper requirements for hearings, proposed rules and adopted rules. Nor does Texas have any sort of central journal in which rules and notices may be published.

What the Bill Proposes to Do:

The bill establishes minimum standards of uniform practice and procedure for state agencies, provides for public participation in the rulemaking process, provides for notice of agency rules and actions through newspaper publication restates the law of judicial review, and requires agencies to give notice and current information on their actions.

Changes in Existing Law:

Repeals Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13).

Section by Section Analysis:

Section 1. Purpose. The section declares the public policy of this state to afford minimum standards of uniform practice and procedure of state agencies and to provide public participation and notice of agency action.

Section 2. Short Title. "Administrative Procedure and Texas Register Act."

Section 3. Definitions. This Section defines agency, contested case, license, licensing, party, person, rule and register.

Section 4. Public Information: Adoption of Rules; Availability of Rules and Orders. Each agency is to adopt rules of practice establishing requirements of all formal and informal procedures available, to index and make available all rules and other written policy statements, and to index and make available all final orders, decisions and opinions. No agency rule, order, declaratory ruling, or decision is valid until it has been indexed and made available as required by this bill.

Section 5. Procedure for Adoption of Rules. Prior to adoption, amendment or repeal of any rule, the agency must give notice of its intended action and afford interested parties an opportunity for input. In the case of imminent peril, emergency rules may be made immediately effective. No rule hereafter adopted is valid unless adopted in substantial compliance with this section. An agency may use informal conferences and consultations to obtain viewpoints.

Section 6. Creation of Texas Register. Rules and other documents required to be published shall be published in the Texas Register. The Secretary of State is charged with the responsibility of producing the Register. Free copies are to be furnished certain officials, and others copies are for public distribution.

Section 7. Before March 1, 1976, each agency is required to file with the Secretary all existing rules. Final orders, decisions, opinions or notices adopted prior to the effective date of this bill one not required to be filed.

Section 8. Filing Procedures. A document is filed by delivering two certified copies of the document to the Secretary. The Secretary may prescribe the necessary rules to administer the Register effectively. Microfilming of documents is allowed.

Section 9. Tables of Contents; Certification; Liason. Each issue of the Register must contain a table of contents, and a cumulative index is to be published once each year. Each document must be certified by the agency before publication, and each agency is to designate a liason officer to submit documents to the Secretary.

Section 10. Effect of Filing. Each rule hereafter adopted becomes effective twenty days after the filing with the Secretary unless a later date is required or unless it becomes effective immediately as an emergency rule or unless a federal rule mandates a different date. No agency, order, decision or opinion hereafter adopted is effective before filing. Notice of a proposed rule, amendment or repeal of a rule is effective when published. Publication of notice in the Register is sufficient notice in all instances in which notice by publication is authorized by law.

Section 11. Petition for Adoption of Rules. Any interested person may petition for adoption, amendment or repeal of a rule. Each agency must prescribe procedures for petition. The petition must be acted on within sixty days.

Section 12. Declaratory Rulings by Agencies. Each agency is to establish procedures for issuing declaratory rulings on the applicability of any statutory provision or any other rule or order of the agency. These decisions have the same status as decisions or orders in contested cases.

Section 13. Declaratory Judgement of Validity or Applicability of Rules. The validity or applicability of any rule may be determined in an action for declaratory judgement in a district court of Travis County.

Section 14. Contested Cases; Notices; Hearings, Records. In contested case, all parties shall be afforded an opportunity for hearing after reasonable notice of not less than ten days. Notice is to be published in the Register. Notice must include certain prescribed information to make it effective. Opportunity must be provided for all parties to respond and present evidence. Informal disposition may be made of the case by stipulation, agreed settlement, consent order or default. The record in a contested case shall include all papers, evidence and staff memoranda. Proceedings shall be transcribed on written request. Findings of fact must be based exclusively on the evidence and matters officially noticed.

Section 15. Rules of Evidence; Official Notice. A broad permissive rule of evidence is adopted. Each agency has the authority to swear witnesses and take testimony and to issue subpoenas and commissions. The Section follows the deposition rules of the Texas Rules of Civil Procedure. Deponents and witnesses are to be paid per diem and mileage expenses. Failure to comply with a subpoena or commission is punishable as contempt. Documentary evidence may be received in the form of copies or excerpts in certain instances. Cross-examination is allowed as required for full and true disclosure. Official notice may be taken of matter judicially cognizable. Parties are entitled to assistance of council, but

Section 16. Examination of Record by Agency. If in a contested case a majority of the officials of an agency who are to render the final decision have not heard the case or the record, a decision adverse to a party other than the agency itself shall not be made until a proposal for decision is served on the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal is to be prepared by the hearing officer or one who has read the record.. This section is waiveable by written stipulation.

Section 17. Decisions and Orders. A final decision or order adverse to a party in a contested case shall be in writing or stated on the record. A final decision shall include findings of fact and conclusions of law, spearately stated. Proposed findings and conclusions must be ruled on. Orders are final, in the absence of a timely motion for rehearing, on the expiration of the period allowed for filing such a motion or final and appealable from the date such motion is a motion, or from the date such motion is overruled by operation of law. In case of imminent peril, orders and decisions are final and effective from the date of rendition. A final decision must be rendered within sixty days of the close of the hearing; a longer period is allowed if a contested case is heard by other than a majority of the officials of the agency. A motion for rehearing is, with certain exceptions, a prerequisite to appeal. Motions for rehearing must be filed within fifteen days after the date of rendition of a final decision or order; replies must be filed within twenty-five days and action on the motion within fourty-five days. Overruling by operation of law occurs forty-five days after rendition if action is not taken. The fourty-five day period may be extended not beyond ninty days after rendition; overruling by operation of law occurs in this instance on the date fixed by the order or ninty days after rendition. The parties, with agency approval, may modify the above times.

Section 18. Ex Parte Consultations. Communications on any issue of fact or law by officials with parties or their representatives is prohibited except on notice and opportunity for all parties to participate.

Section 19. Licenses. The notice provisions of Section 3 apply when the grant, denial or renewal of a license is required to be preceded by notice and hearing. If an application for renewal has been made, a license does not expire until the application has been finally decided by the agency. The removal of a license is valid unless the licensee was given notice of the facts alleged to merit the action and the licensee was given an opportunity to show compliance.

Section 20. Judicial Review. When administrative remedies available are exhausted, an aggrieved party is entitled to judicial review. An interlocutory appeal is allowed if review of the final judgement would not provide an adequate remedy. A petition for review must be filed within thirty days after the decision or order is final and appealable. Venue lies only in Travis County unless otherwise provided by statute. Copies of the petition shall be sewed on all parties of record. The agency shall within the time permitted for answer, transmit to the reviewing court a certified copy of the entire record. The record may be shortened by stipulation. Additional evidence may be presented to the agency prior to the court hearing if the court is shown that such evidence is relevant and there were good reasons for failure to present it earlier. Review is by the court without a jury. The court is not to substitute its judgement for that of the agencies as to the weight of the evidence on questions of fact committed

to agency discretion. The court may affirm in whole or in part or reverse and remand if substantial rights of the appellant have been prejudiced. Trial de novo of rate cases from the Railroad Commission is preserved.

Section 21. Appeals. Appeal from the district court is taken in the manner provided for in civil actions generally.

Section 22. This Act does not apply to driver's license revocations authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b), or to the grant, denial, payment, or withdrawal of financial or medical assistance or benefits under service programs of the State Department of Public Welfare.

Section 23. Repeal of Existing Laws. Repeals Chapter 274, Acts of the 57th Legislature, Regular Session, 1969 (Article 6252-13) and all other laws in conflict.

Section 24. Effective Date. January 1, 1976.

Section 25. Emergency

Summary of Committee Action:

The Committee posted notice in accordance with Rule VIII, Section 13, and considered S.B. 41 in a public hearing on March 19, 1975.

The Committee voted, on March 19, 1975 by a record vote of seven ayes and one nay, one present not voting and two absent, to report the measure back to the House favorably with amendments with a recommendation that it do pass and be printed.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 20, 1975

Honorable Tim Von Dohlen, Chairman
Committee on Judicial Affairs
House of Representatives
Austin, Texas 78701

In Re: Senate Bill No. 41, as amended
By: Sherman

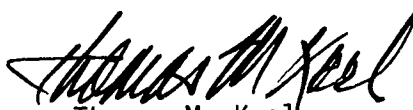
Sir:

In response to your request and pursuant to House Rule VIII, Section 27, this office finds the fiscal implications of Senate Bill No. 41, as amended (providing standards for State administrative agency practice and procedures and the Texas Register) to be as follows:

1. The bill makes no appropriation but authorizes legislative appropriations to implement the provisions of the bill.
2. The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	
1976	\$3,755,140
1977	3,788,847
1978	3,856,227
1979	3,919,175
1980	3,986,897

3. Similar annual costs will continue as long as the provisions of the bill are in effect.


Thomas M. Keel
Director

DATE APR 2 1975

READ AND ADOPTED *as amended*

Joseph Hallman
Clerk

House of Representatives

AMENDMENT NO. _____

BY *Von Hohlen*

1 Amend S.B. No. 41 by striking all below the enacting clause
2 and substituting the following:

3 Section 1. PURPOSE. It is declared the public policy of
4 this state to afford minimum standards of uniform practice and
5 procedure for state agencies, to provide for public participation
6 in the rulemaking process, to provide adequate and proper public
7 notice of proposed agency rules and agency actions through
8 publication of a state register, and to restate the law of judicial
9 review of agency action.

10 Sec. 2. SHORT TITLE. This Act shall be known and may be
11 cited as the Administrative Procedure and Texas Register Act.

12 Sec. 3. DEFINITIONS. As used in this Act:

13 (1) "Agency" means any state board, commission, department,
14 or officer having statewide jurisdiction, other than an agency^{1/2}
15 wholly financed by federal funds, the legislature, the courts,
16 the Industrial Accident Board, and institutions of higher
17 education, that makes rules or determines contested cases.

18 (2) "Contested case" means a proceeding, including but not
19 restricted to ratemaking and licensing, in which the legal rights,
20 duties, or privileges of a party are to be determined by an agency
21 after an opportunity for adjudicative hearing.

22 (3) "License" includes the whole or part of any agency
23 permit, certificate, approval, registration, or similar form of
24 permission required by law.

25 (4) "Licensing" includes the agency process respecting the

1 granting, denial, renewal, revocation, suspension, annulment,
2 withdrawal, or amendment of a license.

3 (5) "Party" means each person or agency named or admitted
4 as a party.

5 (6) "Person" means any individual, partnership, corporation,
6 association, governmental subdivision, or public or private
7 organization of any character other than an agency.

8 (7) "Rule" means any agency statement of general
9 applicability that implements, interprets, or prescribes law or
10 policy, or describes the procedure or practice requirements of
11 an agency. The term includes the amendment or repeal of a prior
12 rule but does not include statements concerning only the internal
13 management or organization of any agency and not affecting private
14 rights or procedures.

15 (8) "Register" means the Texas Register established by ²/₁
16 this Act.

17 Sec. 4. PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY
18 OF RULES AND ORDERS. (a) In addition to other rulemaking
19 requirements imposed by law, each agency shall:

20 (1) adopt rules of practice setting forth the nature and
21 requirements of all formal and informal procedures available;

22 (2) index and make available for public inspection all
23 rules and all other written statements of policy or interpretations
24 formulated, adopted, or used by the agency in the discharge of
25 its functions; and

26 (3) index and make available for public inspection all
27 final orders, decisions, and opinions.

1 (b) No agency rule, order, or decision made or issued on
2 or after the effective date of this Act is valid or effective
3 against any person or party, nor may it be invoked by the agency
4 for any purpose, until it has been indexed and made available for
5 public inspection as required by this Act. This provision is not
6 applicable in favor of any person or party who has actual knowledge
7 of the rule, order, or decision.

8 Sec. 5. PROCEDURE FOR ADOPTION OF RULES. (a) Prior to
9 the adoption of any rule, an agency shall give at least 30 days'
10 notice of its intended action. Notice of the proposed rule shall
11 be filed with the secretary of state and published by the secretary
12 of state in the Texas Register. The notice must include:

13 (1) a brief explanation of the proposed rule;
14 (2) the text of the proposed rule, except any portion^{3/4}
15 omitted as provided in Section 6(c) of this Act, prepared in a
16 manner to indicate the words to be added or deleted from the
17 current text, if any;

18 (3) a statement of the statutory or other authority under
19 which the rule is proposed to be promulgated;

20 (4) a request for comments on the proposed rule from any
21 interested person; and

22 (5) any other statement required by law.

23 (b) Each notice of a proposed rule becomes effective as
24 notice when published in the register. The notice shall be mailed
25 to all persons who have made timely written requests of the agency
26 for advance notice of its rulemaking proceedings. However, failure
27 to mail the notice does not invalidate any actions taken or rules

1 adopted.

2 (c) Prior to the adoption of any rule, an agency shall
3 afford all interested persons reasonable opportunity to submit
4 data, views, or arguments, orally or in writing. In the case of
5 substantive rules, opportunity for public hearing must be granted
6 if requested by at least 25 persons, by a governmental subdivision
7 or agency, or by an association having at least 25 members. The
8 agency shall consider fully all written and oral submissions
9 concerning the proposed rule. On adoption of a rule, the agency,
10 if requested to do so by an interested person either prior to
11 adoption or within 30 days after adoption, shall issue a concise
12 statement of the principal reasons for and against its adoption,
13 incorporating in the statement its reasons for overruling the⁴/₅
14 considerations urged against its adoption.

15 (d) If an agency finds that an imminent peril to the public
16 health, safety, or welfare requires adoption of a rule on fewer
17 than 30 days' notice and states in writing its reasons for that
18 finding, it may proceed without prior notice or hearing or on any
19 abbreviated notice and hearing that it finds practicable to adopt
20 an emergency rule. The rule may be effective for a period of not
21 longer than 120 days renewable once for a period not exceeding
22 60 days, but the adoption of an identical rule under Subsections
23 (a) and (c) of this section is not precluded. An emergency rule
24 adopted under the provisions of this subsection, and the agency's
25 written reasons for the adoption, shall be filed in the office
26 of the secretary of state for publication in the Texas Register.

27 (e) No rule hereafter adopted is valid unless adopted in

1 substantial compliance with this section. A proceeding to contest
2 any rule on the ground of noncompliance with the procedural
3 requirements of this section must be commenced within two years
4 after the effective date of the rule.

5 (f) An agency may use informal conferences and consultations
6 as means of obtaining the viewpoints and advice of interested
7 persons concerning contemplated rulemaking. Each agency also is
8 authorized to appoint committees of experts or interested persons
9 or representatives of the general public to advise it with respect
10 to any contemplated rulemaking. The powers of these committees
11 are advisory only.

12 Sec. 6. CREATION OF TEXAS REGISTER. (a) The secretary^{5/6}
13 of state shall compile, index, and publish a publication to be
14 known as the Texas Register, which shall contain:

15 (1) notices of proposed rules issued after the effective
16 date of this Act and filed in the office of the secretary of state
17 as provided in Section 5 of this Act;

18 (2) the text of rules adopted after the effective date of
19 this Act and filed in the office of the secretary of state;

20 (3) notices of open meetings issued after the effective
21 date of this Act and filed in the office of the secretary of state
22 as provided by law;

23 (4) executive orders issued by the governor after the
24 effective date of this Act;

25 (5) summaries of requests made after the effective date
26 of this Act for opinions of the attorney general, which shall be
27 prepared by the attorney general and forwarded to the secretary

1 of state;

2 (6) summaries of opinions of the attorney general issued
3 after the effective date of this Act, which shall be prepared by
4 the attorney general and forwarded to the secretary of state; and

5 (7) other information of general interest to the public
6 of Texas, which may include, but is not limited to, federal
7 legislation or regulations affecting the state or state agencies
8 and state agency organizational and personnel changes.

9 (b) The secretary of state shall publish the register at ⁴/₁
10 regular intervals, but not less than 100 times each calendar year.

11 (c) The secretary of state may omit from the register any
12 information the publication of which he deems cumbersome,
13 expensive, or otherwise inexpedient, if the information is made
14 available in printed or processed form by the adopting agency on
15 application for it, and if the register contains a notice stating
16 the general subject matter of the information and the manner in
17 which a copy of it may be obtained.

18 (d) One copy of each issue of the register shall be made
19 available free on request to each board, commission, and department
20 having statewide jurisdiction, to the governor, to the lieutenant
21 governor, to the attorney general, to each member of the
22 legislature, to each county clerk in the state, and to the Supreme
23 Court, Court of Criminal Appeals, and each ~~Court of Civil Appeals~~.

24 (e) The secretary of state shall make copies of the register
25 available to other persons on payment of reasonable fees to be
26 fixed by the secretary of state.

27 Sec. 7. FILING OF EXISTING DOCUMENTS. Before March 1,

1 1976, each agency shall file in the office of the secretary of
2 state two certified copies of each rule existing on the effective
3 date of this Act. *Existing rules become effective immediately*

4 Sec. 8. FILING PROCEDURES. (a) Each agency shall file
5 a document for publication in the Texas Register by delivering
6 to the office of the secretary of state during normal working
7 hours two certified copies of the document to be filed. On receipt ^{1/8}
8 of a document required by this Act to be filed in the office of
9 the secretary of state and published in the register, the secretary
10 of state shall note the day and hour of filing on the certified
11 copies. One certified copy of each filed document must be
12 maintained in original form or on microfilm in a permanent register
13 in the office of the secretary of state and, on filing, shall be
14 made available immediately for public inspection during regular
15 business hours.

16 (b) If there is a conflict, the official text of a rule
17 is the text on file with the secretary of state, and not the text
18 published in the register or on file with the issuing agency.

19 (c) The secretary of state may promulgate rules to insure
20 the effective administration of this Act. The rules may include,
21 but are not limited to, rules prescribing paper size and the
22 format of documents required to be filed by this Act. The
23 secretary of state may refuse to accept for filing and publication
24 any document that does not substantially conform to the promulgated
25 rules.

26 (d) The secretary of state may maintain on microfilm the
27 files of agency rules and any other information required by this

1 Act to be published in the register and, after microfilming,
2 destroy the original copies of all information submitted for
3 publication.

4 Sec. 9. TABLES OF CONTENTS; CERTIFICATION; LIAISON. (a)
5 Each issue of the register must contain a table of contents.

6 (b) A cumulative index to all information required by this ^{8/}
7 Act to be published during the previous year shall be published
8 at least once each year.

9 (c) Each document submitted to the secretary of state for
10 filing or publication as provided in this Act must be certified
11 by an official of the submitting agency authorized to certify
12 documents of that agency.

13 (d) Each agency shall designate at least one individual
14 to act as a liaison through whom all required documents may be
15 submitted to the secretary of state for filing and publication.

16 Sec. 10. EFFECT OF FILING. (a) Each rule hereafter adopted
17 becomes effective 20 days after the filing of two certified copies
18 in the office of the secretary of state, except that:

19 (1) if a later date is required by statute or specified
20 in the rule, the later date is the effective date; and

21 (2) subject to applicable constitutional or statutory
22 provisions, an emergency rule becomes effective immediately on
23 filing with the secretary of state, or on a stated date less than
24 20 days thereafter, if the agency finds that this effective date
25 is necessary because of imminent peril to the public health,
26 safety, or welfare; and

27 (3) if a federal statute or regulation requires that an

1 agency implement a rule by a certain date, the rule is effective
2 on the prescribed date.

3 (b) An agency finding, as described in Subsection (a)(2)
4 of this section, and a brief statement of the reasons for it,
5 shall be filed with the rule. The agency shall take appropriate⁷/₁₀
6 measures to make emergency rules known to persons who may be
7 affected by them.

8 (c) A rule adopted as provided in Subsection (a)(3) of
9 this section shall be filed in the office of the secretary of
10 state and published in the register.

11 Sec. 11. PETITION FOR ADOPTION OF RULES. Any interested
12 person may petition an agency requesting the adoption of a rule.
13 Each agency shall prescribe by rule the form for petitions and
14 the procedure for their submission, consideration, and disposition.
15 Within 60 days after submission of a petition, the agency either
16 shall deny the petition in writing, stating its reasons for the
17 denial, or shall initiate rulemaking proceedings in accordance
18 with Section 5 of this Act.

19 Sec. 12. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY
20 OF RULES. The validity or applicability of any rule, including
21 an emergency rule adopted under Section 5(d) of this Act, may be
22 determined in an action for declaratory judgment in a district
23 court of Travis County, and not elsewhere, if it is alleged that
24 the rule, or its threatened application, interferes with or
25 impairs, or threatens to interfere with or impair, the legal
26 rights or privileges of the plaintiff. The agency must be made
27 a party to the action. A declaratory judgment may be rendered

1 whether the plaintiff has requested the agency to pass on the
2 validity or applicability of the rule in question. However, no
3 proceeding brought under this section may be used to delay or
4 stay a hearing after notice of hearing has been given if a¹⁹/₁₁
5 suspension, revocation, or cancellation of a license by an agency
6 is at issue before the agency.

7 Sec. 13. CONTESTED CASES; NOTICE; HEARINGS; RECORDS. (a)
8 In a contested case, all parties must be afforded an opportunity
9 for hearing after reasonable notice of not less than 10 days.

10 (b) The notice must include:

11 (1) a statement of time, place, and nature of the hearing;
12 (2) a statement of the legal authority and jurisdiction
13 under which the hearing is to be held;

14 (3) a reference to the particular sections of the statutes
15 and rules involved; and

16 (4) a short and plain statement of the matters asserted.

17 (c) If the agency or other party is unable to state the
18 matters in detail at the time the notice is served, the initial
19 notice may be limited to a statement of the issues involved.

20 Thereafter, on timely written application, a more definite and
21 detailed statement must be furnished not less than three days
22 prior to the date set for the hearing.

23 (d) Opportunity must be afforded all parties to respond
24 and present evidence and argument on all issues involved.

25 (e) Unless precluded by law, informal disposition may be
26 made of any contested case by stipulation, agreed settlement,
27 consent order, or default.

1 (f) The record in a contested case includes: ¹¹/₁₂
2 (1) all pleadings, motions, and intermediate rulings;
3 (2) evidence received or considered;
4 (3) a statement of matters officially noticed;
5 (4) questions and offers of proof, objections, and rulings
6 on them;
7 (5) proposed findings and exceptions;
8 (6) any decision, opinion, or report by the officer
9 presiding at the hearing; and
10 (7) all staff memoranda or data submitted to or considered
11 by the hearing officer or members of the agency, involved in making
12 the decision. who are

13 (g) Proceedings, or any part of them, must be transcribed
14 on written request of any party. The agency may pay the cost of
15 the transcript or assess the cost to one or more parties. This
16 Act does not limit an agency to a stenographic record of
17 proceedings.

18 (h) Findings of fact must be based exclusively on the
19 evidence and on matters officially noticed.

20 Sec. 14. RULES OF EVIDENCE, OFFICIAL NOTICE. (a) In
21 contested cases, irrelevant, immaterial, or unduly repetitious
22 evidence shall be excluded. The rules of evidence as applied in
23 nonjury civil cases in the district courts of this state shall
24 be followed. When necessary to ascertain facts not reasonably
25 susceptible of proof under those rules, evidence not admissible
26 thereunder may be admitted, except where precluded by statute,
27 if it is of a type commonly relied upon by reasonably prudent men ¹⁷/₁₂

1 in the conduct of their affairs. Agencies shall give effect to
2 the rules ~~and~~ privilege recognized by law. Objections to
3 evidentiary offers may be made and shall be noted in the record.
4 Subject to these requirements, if a hearing will be expedited and
5 the interests of the parties will not be prejudiced substantially,
6 any part of the evidence may be received in written form.

7 (b) In connection with any contested case held under the
8 provisions of this Act, an agency may swear witnesses and take
9 their testimony under oath.

10 (c) On its own motion or on the written request of any
11 party to a contested case pending before it, on a showing of good
12 cause, and on deposit of sums that will reasonably insure payment
13 of the amounts estimated to accrue under ~~Subsections~~ (1)(1) and
14 (2) of this section, an agency shall issue a subpoena addressed
15 to the sheriff or any constable to require the attendance of
16 witnesses and the production of books, records, papers, or other
17 objects as may be necessary and proper for the purposes of the
18 proceedings.

19 (d) On its own motion or on the written request of any
20 party to a contested case pending before it, on a showing of good
21 cause, and on deposit of sums that will reasonably insure payment
22 of the amounts estimated to accrue under Subsection¹³ (1)(1) and
23 (2) of this section, an agency shall issue a commission, addressed
24 to the several officers authorized by statute to take depositions,
25 to require that the deposition of a witness be taken, which
26 commission shall authorize the issuance of any subpoenas necessary¹³
27 to require that the witness appear and produce, at the time the

1 deposition is taken, books, records, papers, or other objects as
2 may be necessary and proper for the purposes of the proceeding.
3 The deposition of a member of an agency board may not be taken
4 after a date has been set for hearing.

5 (e) The place of taking the depositions shall be in the
6 county of the witness' residence, or where the witness is employed
7 or regularly transacts business in person. The commission shall
8 authorize and require the officer or officers to whom it is
9 addressed, or either of them, to examine the witness before him
10 on the date and at the place named in the commission and to take
11 answers under oath to questions which may be propounded to the
12 witness by the parties to the proceeding, the agency, or the
13 attorneys for the parties or the agency. The commission shall
14 require the witness to remain in attendance from day to day until
15 the deposition is begun and completed.

16 (f) The witness shall be carefully examined, the testimony
17 shall be reduced to writing or typewriting by the officer taking
18 the deposition, or by some person under the officer's personal
19 supervision, or by the deponent in the officer's presence, and
20 by no other person, and shall, after it has been reduced to writing
21 or typewriting, be subscribed by the deponent.

22 (g) The officer taking the oral deposition may not sustain
23 objections to any of the testimony taken, or exclude any of it,
24 and any of the parties or attorneys engaged in taking testimony
25 have their objections reserved for the action of the agency before^{11/15}
26 which the matter is pending. The administrator or other officer
27 conducting the hearing is not confined to objections made at the

1 taking of the testimony.

2 (h) When the testimony is fully transcribed, the deposition
3 shall be submitted to the witness for examination and read to or
4 by the witness, unless the examination and reading are waived by
5 the witness and by the parties in writing. However, if the witness
6 is a party to the contested case pending before the agency with
7 an attorney of record, the deposition officer shall notify the
8 attorney of record in writing by registered mail or certified
9 mail that the deposition is ready for examination and reading at
10 the office of the deposition officer, and if the witness does not
11 appear and examine, read, and sign the deposition within 20 days
12 after the mailing of the notice, the deposition shall be returned
13 as provided in this Act for unsigned depositions. In any event,
14 the witness must sign the deposition at least three days prior
15 to the hearing, or it shall be returned as provided in this Act
16 for unsigned depositions. Any changes in form or substance which
17 the witness desires to make shall be entered on the deposition
18 by the officer with a statement of the reasons given by the witness
19 for making them. The deposition shall then be signed by the
20 witness, unless the parties present at the taking of the deposition
21 by stipulation waive the signing or the witness is ill, cannot
22 be found, or refuses to sign. If the deposition is not signed
23 by the witness, the officer shall sign it and state on the record
24 the fact of the waiver, illness, or absence of the witness or the¹⁵/₁₀
25 fact of the refusal to sign, together with the reason, if any,
26 given for failure to sign. The deposition may then be used as
27 fully as though signed.

1 (i) A deposition may be returned to the agency before which
2 the contested case is pending either by mail, or by a party
3 interested in taking the deposition, or by any other person. If
4 returned by mail, the agency shall endorse on the deposition that
5 it was received from the post office and shall cause the agency
6 employee so receiving the deposition to sign it. If not sent by
7 mail, the person delivering it to the agency shall make affidavit
8 before the agency that he received it from the hands of the officer
9 before whom it was taken, that it has not been out of his
10 possession since, and that it has undergone no alteration.

11 (j) A deposition, after being filed with the agency, may
12 be opened by any employee of the agency at the request of either
13 party or his counsel. The employee shall endorse on the deposition
14 on what day and at whose request it was opened, signing the
15 deposition, and it shall remain on file with the agency for the
16 inspection of any party.

17 (k) Regardless of whether cross interrogatories have been
18 propounded, any party is entitled to use the deposition in the
19 contested case pending before the agency.

20 (l) A witness or deponent who is not a party and who is
21 subpoenaed or otherwise compelled to attend any hearing or
22 proceeding to give a deposition or to produce books, records,
23 papers, or other objects that may be necessary and proper for the ¹⁶/₁₇
24 purposes of the proceeding under the authority of this section
25 is entitled to receive:

26 (1) mileage of 10 cents a mile, or a greater amount as
27 prescribed by agency rule, for going to, and returning from the

1 place of the hearing or the place where the deposition is taken,
2 if the place is more than 25 miles from the person's place of
3 residence; and

4 (2) a fee of \$10 a day, or a greater amount as prescribed
5 by agency rule, for each day or part of a day the person is
6 necessarily present as a witness or deponent.

7 (m) Mileage and fees to which a witness is entitled under
8 this section shall be paid by the party or agency at whose request
9 the witness appears or the deposition is taken, on presentation
10 of proper vouchers sworn by the witness and approved by the agency.

11 (n) In the case of failure of a person to comply with a
12 subpoena or commission issued under the authority of this Act,
13 the agency issuing the subpoena or commission, acting through the
14 attorney general, or the party requesting the subpoena or
15 commission, may bring suit to enforce the subpoena or commission
16 in a district court in Travis County. The court, if it determines
17 that good cause exists for the issuance of the subpoena or
18 commission, shall order compliance with the requirements of the
19 subpoena or commission. Failure to obey the order of the court
20 may be punished by the court as contempt.

21 (o) In contested cases, documentary evidence may be received
22 in the form of copies or excerpts if the original is not readily¹¹/₁₂
23 available. On request, parties shall be given an opportunity to
24 compare the copy with the original.

25 (p) In contested cases, a party may conduct
26 cross-examinations required for a full and true disclosure of the
27 facts.

1 (q) In connection with any hearing held under the provisions
2 of this Act, official notice may be taken of all facts judicially
3 cognizable. In addition, notice may be taken of generally
4 recognized facts within the area of the agency's specialized
5 knowledge. Parties shall be notified either before or during the
6 hearing, or by reference in preliminary reports or otherwise, of
7 the material officially noticed, including any staff memoranda
8 or data, and they must be afforded an opportunity to contest the
9 material so noticed. The special skills or knowledge of the
10 agency and its staff may be utilized in evaluating the evidence.

11 (r) In contested cases, all parties are entitled to the
12 assistance of their counsel before administrative agencies. This
13 right may be expressly waived.

14 Sec. 15. EXAMINATION OF RECORD BY AGENCY. If in a contested
15 case a majority of the officials of the agency who are to render
16 the final decision have not heard the case or read the record,
17 the decision, if adverse to a party to the proceeding other than
18 the agency itself, may not be made until a proposal for decision
19 is served on the parties, and an opportunity is afforded to each
20 party adversely affected to file exceptions and present briefs
21 to the officials who are to render the decision. The proposal¹⁸/₁₉
22 for decision must contain a statement of the reasons for the
23 proposed decision and of each finding of fact and conclusion of
24 law necessary to the proposed decision, prepared by the person
25 who conducted the hearing or by one who has read the record. The
26 parties by written stipulation may waive compliance with this
27 section.

1 Sec. 16. DECISIONS AND ORDERS. (a) A final decision or
2 order adverse to a party in a contested case must be in writing
3 or stated in the record.

4 (b) A final decision must include findings of fact and
5 conclusions of law, separately stated. Findings of fact, if set
6 forth in statutory language, must be accompanied by a concise and
7 explicit statement of the underlying facts supporting the findings.
8 If, in accordance with agency rules, a party submitted proposed
9 findings of fact, the decision shall include a ruling on each
10 proposed finding. Parties shall be notified either personally
11 or by mail of any decision or order. On written request, a copy
12 of the decision or order shall be delivered or mailed to any party
13 and to his attorney of record.

14 (c) A decision is final, in the absence of a timely motion
15 for rehearing, on the expiration of the period for filing a motion
16 for rehearing, and is final and appealable on the date of rendition
17 of the order overruling the motion for rehearing, or on the date
18 the motion is overruled by operation of law. (If an agency board
19 includes a member who (1) receives no salary for his work as a
20 board member and who (2) resides outside Travis County, the board
21 may rule on a motion for rehearing at a meeting or by mail,
22 telephone, telegraph, or other suitable means of communication.)
23 If an agency finds that an imminent peril to the public health,
24 safety, or welfare requires immediate effect of a final decision
25 or order in a contested case, it shall recite the finding in the
26 decision or order as well as the fact that the decision or order
27 is final and effective on the date rendered, in which event the

1 decision or order is final and appealable on the date rendered
2 and no motion for rehearing is required as a prerequisite for
3 appeal.

4 (d) The final decision or order must be rendered within
5 60 days after the date the hearing is finally closed. In a
6 contested case heard by other than a majority of the officials
7 of an agency, the agency may prescribe a longer period of time
8 within which the final order or decision of the agency shall be
9 issued. The extension, if so prescribed, shall be announced at
10 the conclusion of the hearing.

11 (e) Except as provided in Subsection (c) of this section,
12 a motion for rehearing is a prerequisite to an appeal. A motion
13 for rehearing must be filed within 15 days after the date of
14 rendition of a final decision or order. Replies to a motion for
15 rehearing must be filed with the agency within 25 days after the
16 date of rendition of the final decision or order, and agency
17 action on the motion must be taken within 45 days after the date
18 of rendition of the final decision or order. If agency action
19 is not taken within the 45-day period, the motion for rehearing^{10/21}
20 is overruled by operation of law 45 days after the date of
21 rendition of the final decision or order. The agency may by
22 written order extend the period of time for filing the motions
23 and replies and taking agency action, except that an extension
24 may not extend the period for agency action beyond 90 days after
25 the date of rendition of the final decision or order. In the
26 event of an extension, the motion for rehearing is overruled by
27 operation of law on the date fixed by the order, or in the absence

1 of a fixed date, 90 days after the date of the final decision or
2 order.

3 (f) The parties may by agreement with the approval of the
4 agency provide for a modification of the times provided in this
5 section.

6 Sec. 17. EX PARTE CONSULTATIONS. Unless required for the
7 disposition of ex parte matters authorized by law, members or
8 employees of an agency assigned to render a decision or to make
9 findings of fact and conclusions of law in a contested case may
10 not communicate, directly or indirectly, in connection with any
11 issue of fact or law with any party or his representative, except
12 on notice and opportunity for all parties to participate.

13 Sec. 18. LICENSES. (a) When the grant, denial, or renewal
14 of a license is required to be preceded by notice and opportunity
15 for hearing, the provisions of this Act concerning contested cases
16 apply.

17 (b) When a licensee has made timely and sufficient
18 application for the renewal of a license or a new license for any²¹
19 activity of a continuing nature, the existing license does not₂₂
20 expire until the application has been finally determined by the
21 agency, and in case the application is denied or the terms of the
22 new license limited, until the last day for seeking review of the
23 agency order or a later date fixed by order of the reviewing
24 court.

25 (c) No revocation, suspension, annulment, or withdrawal
26 of any license is effective unless, prior to the institution of
27 agency proceedings, the agency gave notice by ^{personal service or by} registered or
^

1 certified mail to the licensee of facts or conduct alleged to
2 warrant the intended action, and the licensee was given an
3 opportunity to show compliance with all requirements of law for
4 the retention of the license.

5 Sec. 19. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person
6 who has exhausted all administrative remedies available within
7 an agency and who is aggrieved by a final decision in a contested
8 case is entitled to judicial review under this Act.

9 (b) Proceedings for review are instituted by filing a
10 petition within 30 days after the date the decision or order
11 complained of is final and appealable, in a district court of
12 Travis County, and not elsewhere, except in cases where venue is
13 otherwise provided by statute. Copies of the petition shall be
14 served on the agency and on all parties of record in the agency
15 hearing involved in the matter for which review is sought.

16 (c) After service of the petition on the agency, and within
17 the time permitted for filing an answer or such additional time
18 as may be allowed by the court, the agency shall transmit to the
19 reviewing court the original or a certified copy of the entire
20 record of the proceeding under review. By stipulation of all
21 parties to the review proceedings, the record may be shortened.
22 A party unreasonably refusing to stipulate to limit the record
23 may be taxed by the court for the additional costs. The court
24 may require or permit subsequent corrections or additions to the
25 record.

26 (d) If, before the date set for hearing, application is
27 made to the court for permission to present additional evidence,

1 and it is shown to the satisfaction of the court that the
2 additional evidence is material and that there were good reasons
3 for failure to present it in the proceeding before the agency,
4 the court may order that the additional evidence be taken before
5 the agency under conditions determined by the court. The agency
6 may modify its findings and decision because of the additional
7 evidence and shall file the evidence and any modifications, new
8 findings, or decisions with the reviewing court.

9 (e) The review shall be conducted by the court without a
10 jury and shall be confined to the record. Proof of alleged
11 irregularities in procedure before the agency, not shown in the
12 record, may be taken in the court.

13 (f) The court may not substitute its judgment for that of
14 the agency as to the weight of the evidence on questions of fact
15 committed to agency discretion. The court may affirm the decision
16 of the agency in whole or in part. The court shall reverse or
17 remand the case for further proceedings if substantial rights of
18 the appellant have been prejudiced because the administrative
19 findings, inferences, conclusions, or decisions:

20 (1) are in violation of constitutional or statutory
21 provisions;

22 (2) are in excess of the statutory authority of the agency;

23 (3) were made under procedures not authorized by law;

24 (4) are affected by other error of law;

25 (5) are not reasonably supported by substantial evidence
26 in view of the reliable and probative evidence in the record as
27 a whole; or

1 (6) are arbitrary or capricious or characterized by abuse
2 of discretion or clearly unwarranted exercise of discretion.

3 (g) Nothing contained in this section affects the right
4 of trial de novo of rate cases appealed from the Railroad
5 Commission of Texas.

6 Sec. 20. APPEALS. Appeals from any final judgment of the
7 district court may be taken by any party in the manner provided
8 for in civil actions generally, but no appeal bond may be required
9 of an agency.

10 Sec. 21. EXCEPTIONS. (a) This Act does not apply to
11 ~~revocations~~ ^{Disciplinary} of driver's licenses as authorized in Article IV,
12 Chapter 173, Acts of the 47th Legislature, Regular Session, 1941,
13 as amended (Article 6687b, Vernon's Texas Civil Statutes).

14 (b) Sections 12 through 20 of this Act do not apply to the
15 granting, payment, denial, or withdrawal of financial or medical
16 assistance or benefits under service programs of the State
17 Department of Public Welfare.

18 (c) Sections 12 through 20 of this Act do not apply to the ^{as}/₂₆
19 Texas Department of Mental Health and Mental Retardation in the
20 allocation of grants-in-aid by the department to mental health
21 and mental retardation services provided by community centers.

22 Sec. 22. REPEAL OF CONFLICTING LAWS. Chapter 274, Acts
23 of the 57th Legislature, Regular Session, 1960 ^{as amended} (Article 6252-13,
24 Vernon's Texas Civil Statutes), and all other laws and parts of
25 laws in conflict with this Act are repealed. This Act does not
26 repeal any existing statutory provisions conferring investigatory
27 authority on any agency, including any provision which grants an

1 agency the power, in connection with investigatory authority, to
2 take depositions, administer oaths or affirmations, examine
3 witnesses, receive evidence, conduct hearings, or issue subpoenas
4 or summons.

5 Sec. 23. EFFECTIVE DATE. This Act takes effect on January
6 1, 1976.

7 Sec. 24. EMERGENCY. The importance of this legislation
8 and the crowded condition of the calendars in both houses create
9 an emergency and an imperative public necessity that the
10 constitutional rule requiring bills to be read on three several
11 days in each house be suspended, and this rule is hereby suspended.

2

Hale
Willis

Von Dohlen

Amend ~~Committee~~ Amendment No. ~~1~~¹⁹ to Senate Bill No. 41 by deleting all of Section ~~20~~¹⁹ and substituting in lieu thereof the following:

Section ~~20~~¹⁹ JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in the District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except

DATE APR 2 1975

READ AND ADOPTED as substituted
Joseph Hallman
Chief Clerk
House of Representatives

to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without

a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Amendment No. _____

By Hal

Amend the Hale amendment to the ^{Floor} ~~Committee~~ Amendment No. 1 to Senate Bill No. 41 by substituting in lieu thereof the following:

Section 19. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act.

~~[A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.]~~ This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in ^a ~~the~~ District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and ^{2/13}

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except

DATE APR 2 1975

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

PA 37

to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

2 (1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.^{2 1/2}

2 (2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without

a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant^{14/25} have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(4)
AMENDMENT NO. _____

BY

Von Dahlen

Amend S.B. No. 41 by striking all above the enacting clause and substituting the following:

A BILL TO BE ENTITLED

AN ACT

providing standards for state administrative practices and procedures; providing for the creation of a state register; providing for review of state agency proceedings; repealing Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes); and declaring an emergency.

APR 2 1975

DATE _____

READ AND ADOPTED

Dorothy Hallman

Chief Clerk
House of Representatives

Enrolled _____

Enrolling Clerk

S.B. No. 41

AN ACT

providing standards for state administrative practices and procedures; providing procedures for adoption of rules by state agencies; providing for the creation of a state register and its contents; providing for review of state agency proceedings; providing for declaratory judgments and procedures for judicial review; providing for witness fees; excepting certain actions of named agencies from application of this Act; providing relationship of this Act to other laws; repealing Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes); providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. PURPOSE. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Sec. 2. SHORT TITLE. This Act shall be known and may be cited as the Administrative Procedure and Texas Register Act.

Sec. 3. DEFINITIONS. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency

1 wholly financed by federal funds, the legislature, the courts,
2 the Industrial Accident Board, and institutions of higher
3 education, that makes rules or determines contested cases.

4 (2) "Contested case" means a proceeding, including but not
5 restricted to ratemaking and licensing, in which the legal rights,
6 duties, or privileges of a party are to be determined by an agency
7 after an opportunity for adjudicative hearing.

8 (3) "License" includes the whole or part of any agency
9 permit, certificate, approval, registration, or similar form of
10 permission required by law.

11 (4) "Licensing" includes the agency process respecting the
12 granting, denial, renewal, revocation, suspension, annulment,
13 withdrawal, or amendment of a license.

14 (5) "Party" means each person or agency named or admitted
15 as a party.

16 (6) "Person" means any individual, partnership, corporation,
17 association, governmental subdivision, or public or private
18 organization of any character other than an agency.

19 (7) "Rule" means any agency statement of general
20 applicability that implements, interprets, or prescribes law or
21 policy, or describes the procedure or practice requirements of
22 an agency. The term includes the amendment or repeal of a prior
23 rule but does not include statements concerning only the internal/
24 management or organization of any agency and not affecting private
25 rights or procedures.

26 (8) "Register" means the Texas Register established by

1 this Act.

2 Sec. 4. PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY
3 OF RULES AND ORDERS. (a) In addition to other rulemaking
4 requirements imposed by law, each agency shall:

5 (1) adopt rules of practice setting forth the nature
6 and requirements of all formal and informal procedures available;

7 (2) index and make available for public inspection
8 all rules and all other written statements of policy or
9 interpretations formulated, adopted, or used by the agency in the
10 discharge of its functions; and

11 (3) index and make available for public inspection
12 all final orders, decisions, and opinions.

13 (b) No agency rule, order, or decision made or issued on
14 or after the effective date of this Act is valid or effective
15 against any person or party, nor may it be invoked by the agency
16 for any purpose, until it has been indexed and made available for
17 public inspection as required by this Act. This provision is not
18 applicable in favor of any person or party who has actual knowledge
19 of the rule, order, or decision.

20 Sec. 5. PROCEDURE FOR ADOPTION OF RULES. (a) Prior to
21 the adoption of any rule, an agency shall give at least 30 days'
22 notice of its intended action. Notice of the proposed rule shall
23 be filed with the secretary of state and published by the secretary
24 of state in the Texas Register. The notice must include:

25 (1) a brief explanation of the proposed rule;

26 (2) the text of the proposed rule, except any portion

omitted as provided in Section 6(c) of this Act, prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;

(4) a request for comments on the proposed rule from any interested person; and

(5) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, an agency shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the

1 considerations urged against its adoption.

2 (d) If an agency finds that an imminent peril to the public
3 health, safety, or welfare requires adoption of a rule on fewer
4 than 30 days' notice and states in writing its reasons for that
5 finding, it may proceed without prior notice or hearing or on any
6 abbreviated notice and hearing that it finds practicable to adopt
7 an emergency rule. The rule may be effective for a period of not
8 longer than 120 days renewable once for a period not exceeding
9 60 days, but the adoption of an identical rule under Subsections
10 (a) and (c) of this section is not precluded. An emergency rule
11 adopted under the provisions of this subsection, and the agency's
12 written reasons for the adoption, shall be filed in the office
13 of the secretary of state for publication in the Texas Register.

14 (e) No rule hereafter adopted is valid unless adopted in
15 substantial compliance with this section. A proceeding to contest
16 any rule on the ground of noncompliance with the procedural
17 requirements of this section must be commenced within two years
18 after the effective date of the rule.

19 (f) An agency may use informal conferences and consultations
20 as means of obtaining the viewpoints and advice of interested
21 persons concerning contemplated rulemaking. Each agency also is
22 authorized to appoint committees of experts or interested persons
23 or representatives of the general public to advise it with respect
24 to any contemplated rulemaking. The powers of these committees
25 are advisory only.

26 Sec. 6. CREATION OF TEXAS REGISTER. (a) The secretary

1 of state shall compile, index, and publish a publication to be
2 known as the Texas Register, which shall contain:

3 (1) notices of proposed rules issued after the
4 effective date of this Act and filed in the office of the secretary
5 of state as provided in Section 5 of this Act;

6 (2) the text of rules adopted after the effective
7 date of this Act and filed in the office of the secretary of
8 state;

9 (3) notices of open meetings issued after the
10 effective date of this Act and filed in the office of the secretary
11 of state as provided by law;

12 (4) executive orders issued by the governor after
13 the effective date of this Act;

14 (5) summaries of requests made after the effective
15 date of this Act for opinions of the attorney general, which shall
16 be prepared by the attorney general and forwarded to the secretary
17 of state;

18 (6) summaries of opinions of the attorney general
19 issued after the effective date of this Act, which shall be
20 prepared by the attorney general and forwarded to the secretary
21 of state; and₃

22 (7) other information of general interest to the
23 public of Texas, which may include, but is not limited to, federal
24 legislation or regulations affecting the state or state agencies
25 and state agency organizational and personnel changes.

26 (b) The secretary of state shall publish the register at

1 regular intervals, but not less than 100 times each calendar year.

2 (c) The secretary of state may omit from the register any
3 information the publication of which he deems cumbersome,
4 expensive, or otherwise inexpedient, if the information is made
5 available in printed or processed form by the adopting agency on
6 application for it, and if the register contains a notice stating
7 the general subject matter of the information and the manner in
8 which a copy of it may be obtained.

9 (d) One copy of each issue of the register shall be made
10 available free on request to each board, commission, and department
11 having statewide jurisdiction, to the governor, to the lieutenant
12 governor, to the attorney general, to each member of the
13 legislature, to each county clerk in the state, and to the supreme
14 court, court of criminal appeals, and each court of civil appeals.

15 (e) The secretary of state shall make copies of the register
16 available to other persons on payment of reasonable fees to be
17 fixed by the secretary of state.

18 Sec. 7. FILING OF EXISTING DOCUMENTS. Before March 1,
19 1976, each agency shall file in the office of the secretary of
20 state two certified copies of each rule existing on the effective
21 date of this Act. Existing rules become effective immediately
22 on filing with the secretary of state.

23 Sec. 8. FILING PROCEDURES. (a) Each agency shall file
24 a document for publication in the Texas Register by delivering
25 to the office of the secretary of state during normal working
26 hours two certified copies of the document to be filed. On receipt

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1 of a document required by this Act to be filed in the office of
2 the secretary of state and published in the register, the secretary
3 of state shall note the day and hour of filing on the certified
4 copies. One certified copy of each filed document must be
5 maintained in original form or on microfilm in a permanent register
6 in the office of the secretary of state and, on filing, shall be
7 made available immediately for public inspection during regular
8 business hours.

9 (b) If there is a conflict, the official text of a rule
10 is the text on file with the secretary of state, and not the text
11 published in the register or on file with the issuing agency.

12 (c) The secretary of state may promulgate rules to insure
13 the effective administration of this Act. The rules may include,
14 but are not limited to, rules prescribing paper size and the
15 format of documents required to be filed by this Act. The
16 secretary of state may refuse to accept for filing and publication
17 any document that does not substantially conform to the promulgated
18 rules.

19 (d) The secretary of state may maintain on microfilm the
20 files of agency rules and any other information required by this
21 Act to be published in the register and, after microfilming,
22 destroy the original copies of all information submitted for
23 publication.

24 Sec. 9. TABLES OF CONTENTS; CERTIFICATION; LIAISON. (a)
25 Each issue of the register must contain a table of contents.

26 (b) A cumulative index to all information required by this

1 Act to be published during the previous year shall be published
2 at least once each year.

3 (c) Each document submitted to the secretary of state for
4 filing or publication as provided in this Act must be certified
5 by an official of the submitting agency authorized to certify
6 documents of that agency.

7 (d) Each agency shall designate at least one individual
8 to act as a liaison through whom all required documents may be
9 submitted to the secretary of state for filing and publication.

10 Sec. 10. EFFECT OF FILING. (a) Each rule hereafter adopted
11 becomes effective 20 days after the filing of two certified copies
12 in the office of the secretary of state, except that:

13 (1) if a later date is required by statute or
14 specified in the rule, the later date is the effective date; and

15 (2) subject to applicable constitutional or statutory
16 provisions, an emergency rule becomes effective immediately on
17 filing with the secretary of state, or on a stated date less than
18 20 days thereafter, if the agency finds that this effective date
19 is necessary because of imminent peril to the public health,
20 safety, or welfare; and

21 (3) if a federal statute or regulation requires that
22 an agency implement a rule by a certain date, the rule is effective
23 on the prescribed date.

24 (b) An agency finding, as described in Subsection (a)(2)
25 of this section, and a brief statement of the reasons for it,
26 shall be filed with the rule. The agency shall take appropriate

measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided in Subsection (a)(3) of this section shall be filed in the office of the secretary of state and published in the register.

Sec. 11. PETITION FOR ADOPTION OF RULES. Any interested person may petition an agency requesting the adoption of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 5 of this Act.

Sec. 12. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES. The validity or applicability of any rule, including an emergency rule adopted under Section 5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or₆ impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency must be made a party to the action. A declaratory judgment may be rendered whether the plaintiff has requested the agency to pass on the validity or applicability of the rule in question. However, no proceeding brought under this section may be used to delay or stay a hearing after notice of hearing has been given if a

1 suspension, revocation, or cancellation of a license by an agency
2 is at issue before the agency.

3 Sec. 13. CONTESTED CASES; NOTICE; HEARINGS; RECORDS. (a)
4 In a contested case, all parties must be afforded an opportunity
5 for hearing after reasonable notice of not less than 10 days.

6 (b) The notice must include:

7 (1) a statement of time, place, and nature of the
8 hearing;

9 (2) a statement of the legal authority and
10 jurisdiction under which the hearing is to be held;

11 (3) a reference to the particular sections of the
12 statutes and rules involved; and

13 (4) a short and plain statement of the matters
14 asserted.

15 (c) If the agency or other party is unable to state the
16 matters in detail at the time the notice is served, the initial
17 notice may be limited to a statement of the issues involved.
18 Thereafter, on timely written application, a more definite and
19 detailed statement must be furnished not less than three days
20 prior to the date set for the hearing.

21 (d) Opportunity must be afforded all parties to respond
22 and present evidence and argument on all issues involved.

23 (e) Unless precluded by law, informal disposition may be
24 made of any contested case by stipulation, agreed settlement,
25 consent order, or default.

26 (f) The record in a contested case includes:

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- 1 (1) all pleadings, motions, and intermediate rulings;
2 (2) evidence received or considered;
3 (3) a statement of matters officially noticed;
4 (4) questions and offers of proof, objections, and
5 rulings on them;
6 (5) proposed findings and exceptions;
7 (6) any decision, opinion, or report by the officer
8 presiding at the hearing; and
9 (7) all staff memoranda or data submitted to or
10 considered by the hearing officer or members of the agency who
11 are involved in making the decision.

12 (g) Proceedings, or any part of them, must be transcribed
13 on written request of any party. The agency may pay the cost of
14 the transcript or assess the cost to one or more parties. This
15 Act does not limit an agency to a stenographic record of
16 proceedings.

17 (h) Findings of fact must be based exclusively on the
18 evidence and on matters officially noticed. /

19 Sec. 14. RULES OF EVIDENCE, OFFICIAL NOTICE. (a) In
20 contested cases, irrelevant, immaterial, or unduly repetitious
21 evidence shall be excluded. The rules of evidence as applied in
22 nonjury civil cases in the district courts of this state shall
23 be followed. When necessary to ascertain facts not reasonably
24 susceptible of proof under those rules, evidence not admissible
25 thereunder may be admitted, except where precluded by statute,
26 if it is of a type commonly relied upon by reasonably prudent men

1 in the conduct of their affairs. Agencies shall give effect to
2 the rules of privilege recognized by law. Objections to
3 evidentiary offers may be made and shall be noted in the record.
4 Subject to these requirements, if a hearing will be expedited and
5 the interests of the parties will not be prejudiced substantially,
6 any part of the evidence may be received in written form.

7 (b) In connection with any contested case held under the
8 provisions of this Act, an agency may swear witnesses and take
9 their testimony under oath.

10 (c) On its own motion or on the written request of any
11 party to a contested case pending before it, on a showing of good
12 cause, and on deposit of sums that will reasonably insure payment
13 of the amounts estimated to accrue under Subsections (1)(1) and
14 (2) of this section, an agency shall issue a subpoena addressed
15 to the sheriff or any constable to require the attendance of
16 witnesses and the production of books, records, papers, or other
17 objects as may be necessary and proper for the purposes of the
18 proceedings.

19 (d) On its own motion or on the written request of any
20 party to a contested case pending before it, on a showing of good
21 cause, and on deposit of sums that will reasonably insure payment
22 of the amounts estimated to accrue under Subsections (1)(1) and
23 (2) of this section, an agency shall issue a commission, addressed
24 to the several officers authorized by statute to take depositions,
25 to require that the deposition of a witness be taken, which
26 commission shall authorize the issuance of any subpoenas necessary

1 to require that the witness appear and produce, at the time the
2 deposition is taken, books, records, papers, or other objects as
3 may be necessary and proper for the purposes of the proceeding.
4 The deposition of a member of an agency board may not be taken
5 after a date has been set for hearing.

6 (e) The place of taking the depositions shall be in the
7 county of the witness' residence, or where the witness is employed
8 or regularly transacts business in person. The commission shall
9 authorize and require the officer or officers to whom it is
10 addressed, or either of them, to examine the witness before him
11 on the date and at the place named in the commission and to take
12 answers under oath to questions which may be propounded to the
13 witness by the parties to the proceeding, the agency, or the
14 attorneys for the parties or the agency. The commission shall
15 require the witness to remain in attendance from day to day until
16 the deposition is begun and completed.

17 (f) The witness shall be carefully examined, the testimony
18 shall be reduced to writing or typewriting by the officer taking
19 the deposition, or by some person under the officer's personal
20 supervision, or by the deponent in the officer's presence, and
21 by no other person, and shall, after it has been reduced to writing
22 or typewriting, be subscribed by the deponent.

23 (g) The officer taking the oral deposition may not sustain
24 objections to any of the testimony taken, or exclude any of it,
25 and any of the parties or attorneys engaged in taking testimony
26 have their objections reserved for the action of the agency before

30 ME
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1 which the matter is pending. The administrator or other officer
2 conducting the hearing is not confined to objections made at the
3 taking of the testimony.

4 (h) When the testimony is fully transcribed, the deposition
5 shall be submitted to the witness for examination and read to or
6 by the witness, unless the examination and reading are waived by
7 the witness and by the parties in writing. However, if the witness
8 is a party to the contested case pending before the agency with
9 an attorney of record, the deposition officer shall notify the
10 attorney of record in writing by registered mail or certified
11 mail that the deposition is ready for examination and reading at
12 the office of the deposition officer, and if the witness does not
13 appear and examine, read, and sign the deposition within 20 days
14 after the mailing of the notice, the deposition shall be returned
15 as provided in this Act for unsigned depositions. In any event,
16 the witness must sign the deposition at least three days prior
17 to the hearing, or it shall be returned as provided in this Act
18 for unsigned depositions. Any changes in form or substance which
19 the witness desires to make shall be entered on the deposition
20 by the officer with a statement of the reasons given by the witness
21 for making them. The deposition shall then be signed by the
22 witness, unless the parties present at the taking of the deposition
23 by stipulation waive the signing or the witness is ill, cannot
24 be found, or refuses to sign. If the deposition is not signed
25 by the witness, the officer shall sign it and state on the record
26 the fact of the waiver, illness, or absence of the witness or the

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1 fact of the refusal to sign, together with the reason, if any,
2 given for failure to sign. The deposition may then be used as
3 fully as though signed.

4 (i) A deposition may be returned to the agency before which
5 the contested case is pending either by mail, or by a party
6 interested in taking the deposition, or by any other person. If
7 returned by mail, the agency shall endorse on the deposition that
8 it was received from the post office and shall cause the agency
9 employee so receiving the deposition to sign it. If not sent by
10 mail, the person delivering it to the agency shall make affidavit
11 before the agency that he received it from the hands of the officer
12 before whom it was taken, that it has not been out of his
13 possession since, and that it has undergone no alteration.

14 (j) A deposition, after being filed with the agency, may
15 be opened by any employee of the agency at the request of either
16 party or his counsel. The employee shall endorse on the deposition
17 on what day and at whose request it was opened, signing the
18 deposition, and it shall remain on file with the agency for the
19 inspection of any party.

20 (k) Regardless of whether cross interrogatories have been
21 propounded, any party is entitled to use the deposition in the
22 contested case pending before the agency.

23 (l) A witness or deponent who is not a party and who is
24 subpoenaed or otherwise compelled to attend any hearing or
25 proceeding to give a deposition or to produce books, records,
26 papers, or other objects that may be necessary and proper for the

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1 purposes of the proceeding under the authority of this section
2 is entitled to receive:

3 (1) mileage of 10 cents a mile, or a greater amount
4 as prescribed by agency rule, for going to, and returning from
5 the place of the hearing or the place where the deposition is
6 taken, if the place is more than 25 miles from the person's place
7 of residence; and

8 (2) a fee of \$10 a day, or a greater amount as
9 prescribed by agency rule, for each day or part of a day the
10 person is necessarily present as a witness or deponent.

11 (m) Mileage and fees to which a witness is entitled under
12 this section shall be paid by the party or agency at whose request
13 the witness appears or the deposition is taken, on presentation
14 of proper vouchers sworn by the witness and approved by the agency.

15 (n) In the case of failure of a person to comply with a
16 subpoena or commission issued under the authority of this Act,
17 the agency issuing the subpoena or commission, acting through the
18 attorney general, or the party requesting the subpoena or
19 commission, may bring suit to enforce the subpoena or commission
20 in a district court in Travis County. The court, if it determines
21 that good cause exists for the issuance of the subpoena or
22 commission, shall order compliance with the requirements of the
23 subpoena or commission. Failure to obey the order of the court
24 may be punished by the court as contempt.

25 (o) In contested cases, documentary evidence may be received
26 in the form of copies or excerpts if the original is not readily

1 available. On request, parties shall be given an opportunity to
2 compare the copy with the original.

3 (p) In contested cases, a party may conduct
4 cross-examinations required for a full and true disclosure of the
5 facts.

6 (q) In connection with any hearing held under the provisions
7 of this Act, official notice may be taken of all facts judicially
8 cognizable. In addition, notice may be taken of generally
9 recognized facts within the area of the agency's specialized
10 knowledge. Parties shall be notified either before or during the
11 hearing, or by reference in preliminary reports or otherwise, of
12 the material officially noticed, including any staff memoranda
13 or data, and they must be afforded an opportunity to contest the
14 material so noticed. The special skills or knowledge of the
15 agency and its staff may be utilized in evaluating the evidence. /q

16 (r) In contested cases, all parties are entitled to the
17 assistance of their counsel before administrative agencies. This
18 right may be expressly waived.

19 Sec. 15. EXAMINATION OF RECORD BY AGENCY. If in a contested
20 case a majority of the officials of the agency who are to render
21 the final decision have not heard the case or read the record,
22 the decision, if adverse to a party to the proceeding other than
23 the agency itself, may not be made until a proposal for decision
24 is served on the parties, and an opportunity is afforded to each
25 party adversely affected to file exceptions and present briefs
26 to the officials who are to render the decision. The proposal

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1 for decision must contain a statement of the reasons for the
2 proposed decision and of each finding of fact and conclusion of
3 law necessary to the proposed decision, prepared by the person
4 who conducted the hearing or by one who has read the record. The
5 parties by written stipulation may waive compliance with this
6 section.

7 Sec. 16. DECISIONS AND ORDERS. (a) A final decision or
8 order adverse to a party in a contested case must be in writing
9 or stated in the record.

10 (b) A final decision must include findings of fact and
11 conclusions of law, separately stated. Findings of fact, if set
12 forth in statutory language, must be accompanied by a concise and
13 explicit statement of the underlying facts supporting the findings.
14 If, in accordance with agency rules, a party submitted proposed
15 findings of fact, the decision shall include a ruling on each
16 proposed finding. Parties shall be notified either personally
17 or by mail of any decision or order. On written request, a copy
18 of the decision or order shall be delivered or mailed to any party
19 and to his attorney of record.

20 (c) A decision is final, in the absence of a timely motion
21 for rehearing, on the expiration of the period for filing a motion
22 for rehearing, and is final and appealable on the date of rendition
23 of the order overruling the motion for rehearing, or on the date
24 the motion is overruled by operation of law. If an agency board
25 includes a member who (1) receives no salary for his work as a
26 board member and who (2) resides outside Travis County, the board

1 may rule on a motion for rehearing at a meeting or by mail,
2 telephone, telegraph, or other suitable means of communication.
3 If an agency finds that an imminent peril to the public health,
4 safety, or welfare requires immediate effect of a final decision
5 or order in a contested case, it shall recite the finding in the
6 decision or order as well as the fact that the decision or order
7 is final and effective on the date rendered, in which event the
8 decision or order is final and appealable on the date rendered
9 and no motion for rehearing is required as a prerequisite for
10 appeal.

11 (d) The final decision or order must be rendered within
12 60 days after the date the hearing is finally closed. In a
13 contested case heard by other than a majority of the officials
14 of an agency, the agency may prescribe a longer period of time¹⁰
15 within which the final order or decision of the agency shall be
16 issued. The extension, if so prescribed, shall be announced at
17 the conclusion of the hearing.

18 (e) Except as provided in Subsection (c) of this section,
19 a motion for rehearing is a prerequisite to an appeal. A motion
20 for rehearing must be filed within 15 days after the date of
21 rendition of a final decision or order. Replies to a motion for
22 rehearing must be filed with the agency within 25 days after the
23 date of rendition of the final decision or order, and agency
24 action on the motion must be taken within 45 days after the date
25 of rendition of the final decision or order. If agency action
26 is not taken within the 45-day period, the motion for rehearing

1 is overruled by operation of law 45 days after the date of
2 rendition of the final decision or order. The agency may by
3 written order extend the period of time for filing the motions
4 and replies and taking agency action, except that an extension
5 may not extend the period for agency action beyond 90 days after
6 the date of rendition of the final decision or order. In the
7 event of an extension, the motion for rehearing is overruled by
8 operation of law on the date fixed by the order, or in the absence
9 of a fixed date, 90 days after the date of the final decision or
10 order.

11 (f) The parties may by agreement with the approval of the
12 agency provide for a modification of the times provided in this
13 section.

14 Sec. 17. EX PARTE CONSULTATIONS. Unless required for the
15 disposition of ex parte matters authorized by law, members or
16 employees of an agency assigned to render a decision or to make
17 findings of fact and conclusions of law in a contested case may
18 not communicate, directly or indirectly, in connection with any
19 issue of fact or law with any party or his representative, except
20 on notice and opportunity for all parties to participate.

21 Sec. 18. LICENSES. (a) When the grant, denial, or renewal
22 of a license is required to be preceded by notice and opportunity
23 for hearing, the provisions of this Act concerning contested cases
24 apply.

25 (b) When a licensee has made timely and sufficient
26 application for the renewal of a license or a new license for any

activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

Sec. 19. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in a District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

1 (3) the filing of the petition vacates an agency
2 decision for which trial de novo is the manner of review authorized
3 by law, but does not affect the enforcement of an agency decision
4 for which another manner of review is authorized.

5 (c) If the manner of review authorized by law for the
6 decision complained of is by trial de novo, the reviewing court
7 shall try all issues of fact and law in the manner applicable to
8 other civil suits in this state but may not admit in evidence the
9 fact of prior agency action or the nature of that action (except
10 to the limited extent necessary to show compliance with statutory
11 provisions which vest jurisdiction in the court). Any party to
12 a trial de novo review may have, on demand, a jury determination
13 of all issues of fact on which such a determination could be had
14 in other civil suits in this state.

15 (d) If the manner of review authorized by law for the
16 decision complained of is other than by trial de novo:

17 (1) after service of the petition on the agency, and
18 within the time permitted for filing an answer (or such additional
19 time as may be allowed by the court), the agency shall transmit
20 to the reviewing court the original or a certified copy of the
21 entire record of the proceeding under review. By stipulation of
22 all parties to the review proceedings, the record may be shortened.
23 A party unreasonably refusing to stipulate to limit the record
24 may be taxed by the court for the additional costs. The court
25 may require or permit subsequent corrections or additions to the
26 record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant

1 have been prejudiced because the administrative findings,
2 inferences, conclusions, or decisions are:

3 (1) in violation of constitutional or statutory
4 provisions;

5 (2) in excess of the statutory authority of the
6 agency;

7 (3) made upon unlawful procedure;

8 (4) affected by other error of law;

9 (5) not reasonably supported by substantial evidence
10 in view of the reliable and probative evidence in the record as
11 a whole; or

12 (6) arbitrary or capricious or characterized by abuse
13 of discretion or clearly unwarranted exercise of discretion.

14 Sec. 20. APPEALS. Appeals from any final judgment of the
15 district court may be taken by any party in the manner provided
16 for in civil actions generally, but no appeal bond may be required
17 of an agency.

18 Sec. 21. EXCEPTIONS. (a) This Act does not apply to
19 suspensions of driver's licenses as authorized in Article IV,
20 Chapter 173, Acts of the 47th Legislature, Regular Session, 1941,
21 as amended (Article 6687b, Vernon's Texas Civil Statutes).

22 (b) Sections 12 through 20 of this Act do not apply to the
23 granting, payment, denial, or withdrawal of financial or medical
24 assistance or benefits under service programs of the State
25 Department of Public Welfare.

26 (c) Sections 12 through 20 of this Act do not apply to the

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1 Texas Department of Mental Health and Mental Retardation in the
2 allocation of grants-in-aid by the department to mental health
3 and mental retardation services provided by community centers.

4 Sec. 22. REPEAL OF CONFLICTING LAWS. Chapter 274, Acts
5 of the 57th Legislature, Regular Session, 1961, as amended (Article
6 6252-13, Vernon's Texas Civil Statutes), and all other laws and
7 parts of laws in conflict with this Act are repealed. This Act
8 does not repeal any existing statutory provisions conferring
9 investigatory authority on any agency, including any provision
10 which grants an agency the power, in connection with investigatory
11 authority, to take depositions, administer oaths or affirmations,
12 examine witnesses, receive evidence, conduct hearings, or issue
13 subpoenas or summons.

14 Sec. 23. EFFECTIVE DATE. This Act takes effect on January
15 1, 1976.

16 Sec. 24. EMERGENCY. The importance of this legislation
17 and the crowded condition of the calendars in both houses create
18 an emergency and an imperative public necessity that the
19 constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 41 passed the senate on February 6, 1975, by a viva-voce vote; April 8, 1975, senate concurred in house amendments by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 41 passed the house, with amendments, on April 3, 1975, by the following vote: Yeas 134, Nays 0.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT providing standards for state administrative agency practice and procedures; providing for review of state agency proceedings; repealing Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended, (Article 6252-13, Vernon's Texas Civil Statutes), and other laws in conflict; and declaring an emergency.

1/16/75 Filed with the Secretary of the Senate
JAN 16 1975 Read, referred to Committee on INTERGOVERNMENTAL RELATIONS
JAN 20 1975 Reported favorably.
Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
Ordered not printed.
FEB 4 1975 Senate and Constitutional Rules to permit consideration suspended by unanimous consent. 27 yeas, 3 nays.
To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.
FEB 4 1975 Read second time amendment read ordered engrossed passed to third reading
Caption ordered amended to conform to body of bill.
75 Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas, _____ nays to place bill on third reading and final passage.
FEB 6 1975 Read third time and passed by a viva-voce vote. _____ yeas, _____ nays.

OTHER ACTION:

*FEB 5 1975 amended and after engrossed by Charles Schnabel Secretary of the Senate
a vote of 19 yeas and 10 nays
FEB 6 1975 Regular Order of Business suspended by a vote of 21 yeas, 7 nays, 1 present not voting

Engrossed
FEB 10 1975 Sent to HOUSE

FEB 10 1975

Received from the Senate

Dorothy Hallman
Chief Clerk, House of Representatives

FEB 11 1975

READ FIRST TIME
AND REFERRED TO COMMITTEE ON
Judicial Affairs

3 20 75 place on a
Van Nohlen

MAR 19 1975 REPORTED FAVORABLY SENT TO PRINTER AS AMENDED

6:45 P.M. 3-20-1975
(Time) (Date)

APR 2 1975

Read Second Time, amended
and passed to third reading by record vote

or _____ yeas, _____ nays.

Dorothy Hallman
Chief Clerk, House of Representatives

APR 2 1975 MOTION TO RECONSIDER THE
WHICH Bill 41
ADOPTED / PASSED AND TO TABLE THE MOTION TO
SIDER PREVAILED PASSED BY A record

YES AND _____ NAYS
Dorothy Hallman
inside

SB No. 41

APR 3 1975

Read third time

and Passed

by following vote yeas

134

Nays

Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

APR 3 1975

Unanimous consent granted to amend
caption of Senate Bill No. 41 to
conform to body of bill.

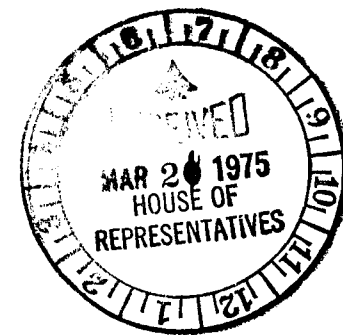
Dorothy Hallman
Chief Clerk, House of Representatives

APR 3 1975 RETURNED TO SENATE

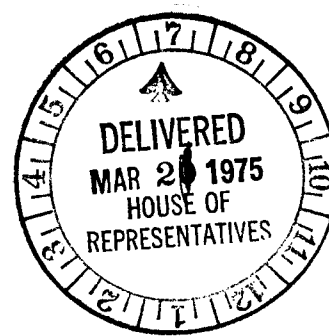
APR 3 1975 RETURNED with amendments
FROM HOUSE

APR 8 1975

Senate concurred in House amend-
ments by viva voce vote.



6:30 pm



6:45 pm